

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

-vs-

CHAD BESCLER, et al.,

Defendants.

ATTORNEY'S DECLARATION

16-CV-6206

HEATHER L. MCKAY, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an Assistant Attorney General, of counsel to Letitia James, Attorney General of the State of New York and, in that capacity, represent the defendants, Perry, Claflin, Beschler, and Schieber (collectively, "Defendants"), in the above-captioned proceeding.

2. I make this declaration in support of Defendants' motion for summary judgment.

3. Attached hereto and made a part hereof as **Exhibit 1** is a copy of the transcript from the partial deposition of the plaintiff Darrell Gunn on May 26, 2020. All references to this transcript will appear in the motion papers as follows: "Exh 1 at [page number]/[line numbers]."

4. Attached hereto and made a part hereof as **Exhibit 2** is a copy of the transcript from the remaining deposition of the plaintiff Darrell Gunn on July 22, 2020. All references to this transcript will appear in the motion papers as follows: "Exh 2 at [page number]/[line numbers]."

1. I obtained the file regarding Plaintiff's trial in the Court of Claims from the archives kept and maintained by the New York State Office of the Attorney General. Defendants

respectfully submit the following documents, which were contained in that file and publicly filed with the Clerk of that Court, as exhibits in support of their motion for summary judgment:

- Exhibit 3.** Decision dismissing Plaintiff's claims, dated December 22, 2016;
- Exhibit 4.** Decision and Order granting in part Plaintiff's motion to late file, dated July 7, 2014;
- Exhibit 5.** Plaintiff's Claim No. 124108;
- Exhibit 6.** Plaintiff's Claim No. 124009;
- Exhibit 7.** Plaintiff's Claim No. 124149; and
- Exhibit 8.** Plaintiff's Claim No. 125097.

5. Attached hereto and made a part hereof as **Exhibit 9** is Plaintiff's Inmate Injury Report dated March 31, 2013, which was identified as Exhibit 5 at Plaintiff's deposition.

6. Attached hereto and made a part hereof as **Exhibit 10** is a portion of Plaintiff's medical records, which was identified as Exhibit 10 at Plaintiff's deposition.

7. Attached hereto and made a part hereof as **Exhibit 11** is a copy of Grievance No. EL-42163-14, which was identified as Exhibit 15 at Plaintiff's deposition

8. Attached hereto and made a part hereof as **Exhibit 12** is a copy of Grievance No. GH-80561-15, which was identified as Exhibit 12 at Plaintiff's deposition

9. Attached hereto and made a part hereof as **Exhibit 13** is Plaintiff's chronological history and disciplinary history print out, which was identified as Exhibit 19 at Plaintiff's deposition.

10. Attached hereto and made a part hereof as **Exhibit 14** is the prison disciplinary hearing packet, which was identified as Exhibit 11 at Plaintiff's deposition.

11. Attached hereto and made a part hereof as **Exhibit 15** is a copy of Grievance No. EL-42205-14, which was identified as Exhibit 16 at Plaintiff's deposition.

12. Attached hereto and made a part hereof as **Exhibit 16** is Plaintiff's statement to OSI Investigator Lovelace on February 4, 2014, which was identified as Exhibit 24 at Plaintiff's deposition.

13. Attached hereto and made a part hereof as **Exhibit 17** is Plaintiff's certified list of closed and active grievances appealed to CORC, which was identified as Exhibit 18 at Plaintiff's deposition.

14. Attached hereto and made a part hereof as **Exhibit 18** is a portion of Plaintiff's mental health records, which was identified as Exhibit 21 at Plaintiff's deposition.

15. Defendants also present to the Court the following declarations in support of their motion:

- i. **Declaration of Timothy Perry**, dated February 16, 2021;
- ii. **Declaration of Jeffrey Claflin**, dated February 16, 2021;
- iii. **Declaration of Chad Beschler**, dated February 17, 2021; and
- iv. **Declaration of Brandon Schieber**, dated February 16, 2021, with the following exhibit:

Exhibit A. Misbehavior report dated July 26, 2013.

16. As explained in the accompanying Memorandum of Law, Plaintiff's claims should be dismissed in their entirety.

Dated: February 18, 2021

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants

s/ Heather L. McKay
HEATHER L. MCKAY
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CERTIFICATE OF SERVICE

I certify that on February 18, 2021, I electronically filed the foregoing Declaration of McKay with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. n/a

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. **Darrell Gunn**
03-B-2443
SING SING CORRECTIONAL FACILITY
354 Hunter Street
Ossining, NY 10562-5498

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants

s/ Heather L. McKay
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EXHIBIT 1

Gunn v Beschler - 5-26-20 - Darrell Gunn

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

v

Index #16-CV-6206

CHAD BESCHLER, ET AL,

Defendants.

X

DEPOSITION OF: DARRELL GUNN

DATE: 5-26-2020

TIME: 9:57 A.M. TO 1:12 P.M.

LOCATION: Sing Sing Correctional Facility
 354 Hunter Street
 Ossining, New York

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 APPEARANCES:

3 FOR THE PLAINTIFF:

4 DARRELL GUNN, ESQ. PRO SE

5

6 FOR THE DEFENDANT:

7 OFFICE OF NY STATE ATTORNEY GENERAL

8 BY: HEATHER MCKAY, A.A.G.

9 144 Exchange Blvd., Suite 200

10 Rochester, New York 14614

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1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 I N D E X O F P R O C E E D I N G S

3 DARRELL GUNN

4 Direct Examination by Ms. McKay 7

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1	Gunn v Beschler - 5-26-20 - Darrell Gunn	
2	E X H I B I T I N D E X	
3	Marked as	
4	Description	
5	Exhibit One	35
6	Original complaint/claim	
7	Exhibit Two	37
8	First amended complaint	
9	Exhibit Three	39
10	Second amended complaint	
11	Exhibit Four	40
12	Third amended complaint (most recent)	
13	Exhibit Five	117
14	Inmate injury report	
15	Exhibit Six	118
16	Inmate grievance filed 4/11/13 about Sgt. Claflin & Perry	
17	Exhibit Seven	118
18	Inmate grievance complaint 4/16/13 against CO Perry	
19	Exhibit Eight	121
20	Inmate grievance complaint 4/18/13 CO Beschler	
21	Exhibit Nine	137
22	Inmate grievance complaint 6/23/13	
23	Exhibit Ten	139
24	Letter written to State Police 6/14/13 by D. Gunn	
25		

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2 R E Q U E S T S

3

4 Any other records that you have involving the incidents at
5 issue in this lawsuit - Page 14

6

7 State Court case - docket number - Page 103

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2 STIPULATIONS

3 IT IS HEREBY STIPULATED AND AGREED by and between
4 the attorneys for the respective parties hereto as follows:

5 THAT the filing of the transcript of the
6 testimony in the County Clerk's office be waived;

7 THAT all objections to questions except as to the
8 form thereof be reserved until the time of trial; and

9 THAT the transcript of testimony may be signed
10 before any Notary Public or other officer authorized to
11 administer oaths.

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2 (On the record; 9:57 a.m.)

3 THE REPORTER: Okay. We are now on the
4 record, it is nine fifty-seven a.m. Would you please
5 raise your right hand?

6 Do you swear or affirm the testimony
7 you're about to give in this cause today is the truth,
8 the whole truth and nothing but the truth?

9 MR. GUNN: Yes.

10 WITNESS; DARRELL GUNN; Sworn

11 THE REPORTER: Can you please state your
12 full name for the record?

13 THE WITNESS: Darrell Gunn.

14 THE REPORTER: Thank you. The witness
15 has been sworn.

16 DIRECT EXAMINATION

17 BY MS. MCKAY:

18 Q. Good morning, Mr. Gunn.

19 A. Good morning.

20 Q. Have you ever done a deposition
21 before?

22 A. No.

23 Q. Okay. So it's pretty simple. I ask
24 you questions and you provide the answers. You were
25 just sworn in. Do you understand what that means?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. So you've sworn to tell the
4 truth. And it's basically the same as if you give any
5 kind of trial testimony. It's sworn testimony. Do you
6 understand that?

7 A. Right.

8 Q. Now, if you don't understand any of
9 my questions, ask me to explain, okay?

10 A. Okay.

11 Q. If you answer the question, then
12 I'll assume that you understood it. Do you -- does that
13 make sense?

14 A. Yes.

15 Q. Okay. And if you need a break, you
16 can take one, that's fine. But there's no breaks
17 allowed while a question is pending. So if I asked you
18 a question, I'll need you to answer that question and
19 then we can take a break. Does that under -- make
20 sense?

21 A. Yes.

22 Q. Okay. And now we're going to be
23 talking about many incidents that you're suing about.
24 So we have a bit of a long day ahead. I also just
25 wanted to let you know, you know, depending on how it's

1 Gunn v Beschler - 5-26-20 - Darrell Gunn
2 going, if it's -- if it seems like it would be better to
3 split our time into two or something, we can talk about
4 doing that, especially with the COVID concerns right
5 now. I know you're wearing a mask, it can be pretty
6 fatiguing. So do you know if you'd like to split this
7 at this time? Do you want to see how we're doing? How
8 do you feel about that?

9 A. Yes, we can split it.

10 Q. Okay. So I could -- what we'd have
11 to do is, do you want to agree to just adjourn the dates
12 right now? First, let's say sixty days, all the dates
13 and then I can have us do this again on another date.
14 So we just split it. Does that sound like a good plan?

15 A. Yes.

16 Q. Okay. Okay. So what I'll do is
17 I'll -- now that we have your -- your agreement on the
18 record, I will write to the Court and let the Court know
19 that we've agreed to adjourn the dates by sixty days,
20 and then I will notify you when we can do this again,
21 okay?

22 A. Okay.

23 Q. All right. Okay. Now, you've
24 already been doing it, but I just want to make sure that
25 you remember to speak clearly and speak slowly and speak

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 loudly. This is even more so the case while you're
3 wearing a mask. We -- the stenographer who is with you
4 will be taking down everything that you say and that
5 will be made into a transcript. So we need to make sure
6 that we're speaking clearly, okay?

7 A. Yes.

8 Q. And the other thing too is that we
9 need to make an effort to not speak over one another or
10 interrupt each other. Sometimes when I'm finishing a
11 question, you'll know what the question, or you'll think
12 you'll know what the question is going to be and you'll
13 try to answer it early. I need you to wait and make
14 sure that you give only verbal responses, okay?

15 A. Okay.

16 Q. Okay. What is your full name?

17 A. Darrell Gunn.

18 Q. Okay. Have you ever gone by any
19 other names?

20 A. No.

21 Q. Have you ever given a different name
22 to police or other officials?

23 A. No.

24 Q. What's your date of Birth

25 A. 5/11/70.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. And what's your max -- what's your
3 maximum amount of education that you've received?

4 A. One year of college.

5 Q. And where did you attend college?

6 A. Onondaga Community College.

7 Q. And you can read and speak English?

8 A. Yes.

9 Q. And where were you born?

10 A. Syracuse.

11 Q. And did you grow up there?

12 A. Yes.

13 Q. Did you graduate from high school?

14 A. No.

15 Q. Did you get a G.E.D.?

16 A. Yes.

17 Q. What is your level of work
18 experience?

19 A. I don't understand.

20 Q. Have you had jobs outside of prison?

21 A. Yes.

22 Q. Okay. What -- just give a brief
23 summary of what those consisted of.

24 A. Restaurants.

25 Q. Okay. Any -- any other jobs that

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 you've had besides working at restaurants?

3 A. Bench welding.

4 Q. All right. And was that all prior
5 to your current incarceration?

6 A. Yes, and auto -- auto tire
7 technician and oil.

8 Q. Okay. How about -- how about while
9 in prison, have you had jobs in prison?

10 A. I'm currently working in the mess
11 hall.

12 Q. What's your height and weight as of
13 today?

14 A. Five eight, one eighty-five.

15 Q. And how about as of the time of the
16 events you're suing about, what was your height and
17 weight then?

18 A. Five eight, one seventy-five.

19 Q. That was in approximately 2013?

20 A. Yes.

21 Q. Okay. Mr. Gunn, do you have any
22 medical training?

23 A. No.

24 Q. And how about any legal training?

25 A. I have a Legal Research Certificate

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 and Law Library Management.

3 Q. Okay. That's something you got
4 while you were in prison?

5 A. Right.

6 Q. Okay. Have you worked as a law
7 clerk?

8 A. Yes.

9 Q. Okay. But you're not doing that
10 currently?

11 A. No.

12 Q. Is there any reason why not?

13 A. Yeah, they're not hiring.

14 Q. Okay. Besides the -- the training
15 that you got to be a law clerk in prison, any other
16 legal training?

17 A. No.

18 Q. Okay. Now, did you keep any records
19 of the events in this lawsuit?

20 A. I don't understand the question.

21 Q. Well, while the incidents were going
22 on, did you keep any kind of a diary or calendar?

23 A. Not a calendar, no.

24 Q. Okay. Did you keep any notes of any
25 kind at the time?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. I kept letters. Sick call slips and
3 I have records from previous lawsuits.

4 Q. Okay. So besides -- besides your
5 letters, your sick call slips and your papers for other
6 lawsuits, you don't have any other notes regarding this
7 lawsuit?

8 A. Not that I can remember.

9 Q. Okay. Now, you've also received a
10 number of documents from me, correct?

11 A. Yes.

12 Q. Okay. So I'm obviously not asking
13 for copies of any of the records that I've provided to
14 you. But if you do come across any other records that
15 you have involving the incidents at issue in this
16 lawsuit, I would request copies of those, okay?

17 A. Okay.

18 Q. Okay. And do you -- what about, do
19 you know of any written statements by other witnesses
20 regarding the incidents here?

21 A. No.

22 Q. Okay. Now, Mr. Gunn, are you on any
23 medications today?

24 A. Yes.

25 Q. Okay. What are those?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Abilify, BuSpar, Prozac, Prazosin,
3 and I take Meloxicam, Tylenol and I take something for
4 cholesterol and I believe something to help me urinate.

5 Q. Okay. Now, do any of those affect
6 your comprehension?

7 A. I get dizzy.

8 Q. Okay. Are you feeling dizzy right
9 now?

10 A. Yes, I get dizzy and I get
11 headaches.

12 Q. Okay. So will any of those affect
13 your ability to testify truthfully today?

14 A. No.

15 Q. Okay. Let me know if you feel the
16 need to stop if you're feeling any dizziness, okay?

17 A. Okay.

18 Q. And are any of those medications new
19 medications or have you been on them for a while?

20 A. I've been on them for a while.

21 Q. Okay. Do you -- approximately -- is
22 it years?

23 A. Yes.

24 Q. Are you currently being treated for
25 medical issues?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. Can you summarize those?

4 A. I'm in pain, I have shoulder pain
5 and neck pain. The doctor ordered physical therapy and
6 to wait for this physical therapist to come in once the
7 COVID-19 lockdown stops.

8 Q. Okay. Any other current medical
9 issues besides the shoulder and neck pain?

10 A. Something is wrong with my big toe.

11 Q. Okay. Anything else besides the
12 shoulder, neck and toe?

13 A. Back, my back is in pain.

14 Q. Okay. Any other current medical
15 issues?

16 A. No.

17 Q. Are you currently being treated for
18 any mental health issues?

19 A. Yes.

20 Q. What does your mental health
21 treatment consist of?

22 A. PTSD, nightmares, depression,
23 anxiety and mental illness.

24 Q. Okay. And are you taking medication
25 for that?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. That's in the medical -- list of
4 medications you already provided?

5 A. Right.

6 Q. Now, the medical problems that you -
7 - the medical issues that you listed, how long
8 approximately have you had those?

9 A. I don't recall.

10 Q. Were you having those medical issues
11 before the incidents here?

12 A. No.

13 Q. Okay. So it's sometime between 2013
14 to the present those things occurred?

15 A. Yes.

16 Q. Okay. And any of those medical
17 issues are you saying were caused by the -- any of the
18 incidents we're dealing with in this lawsuit?

19 A. The depression, nightmares.

20 Q. Okay. Well, hang on, Mr. Gunn. I'm
21 asking you just about the medical issues and then we can
22 talk about the mental health issues. Okay? So just
23 with respect to the --.

24 A. The medical issues --.

25 Q. Hang on, Mr. Gunn. I need you to

1 Gunn v Beschler - 5-26-20 - Darrell Gunn
2 make sure that you don't cut off my questions. Okay?
3 That's -- that's one of our rules, because we need to
4 make sure that for the record, it's clear. So my
5 question is with respect to just the medical issues, did
6 those predate any of the incidents that we're talking
7 about today?

8 A. As far as the shoulder, the neck
9 pain and the back pain? No. With -- the medical issue
10 that occurred during the lawsuit was hemorrhoids.

11 Q. Okay. And we can talk about that.
12 I'm just asking you, any of your current medical
13 problems. Are you saying any of your current medical
14 issues were caused by the incidents we're -- we're going
15 to talk about?

16 A. No.

17 Q. Okay. And now, you described your
18 mental health issues. How long have you had those?

19 A. I don't recall.

20 Q. Okay. Can you provide any estimate
21 of time?

22 A. It wasn't before the issue of the
23 sexual assault.

24 Q. Okay. So are you saying that you
25 didn't have any mental health issues before the first

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 incident on March 29th, 2013?

3 A. Correct.

4 Q. Okay. Had you ever seen O.M.H.

5 staff before that date?

6 A. Yes.

7 Q. Okay. What was that for?

8 A. The scar on my face.

9 Q. I'm asking if you saw any mental
10 health staff before March 29th, 2013?

11 A. Yes.

12 Q. Okay. And what was that for?

13 A. The scar on my face.

14 Q. Okay. So you -- you said that you
15 were seeing mental health staff for a scar on your face?

16 A. Right.

17 Q. Okay. Can you explain what you mean
18 by that?

19 A. I have a scar on my face, I busted
20 my face open.

21 Q. Okay. And so you talked to O.M.H.
22 staff about what had caused that?

23 A. Right.

24 Q. Okay. Do you remember when
25 approximately that was?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No, I don't recall.

3 Q. Okay. Other than the time with the
4 scar on your face. Did you see any O.M.H. staff before
5 March 29th, 2013?

6 A. No.

7 Q. Okay. Have you had any suicidal
8 feelings ever?

9 A. No.

10 Q. You've never attempted suicide?

11 A. No.

12 Q. Okay. And is there anything that
13 you can think of that would prevent you from giving
14 truthful testimony today?

15 A. No.

16 Q. Okay. How was your health at the
17 time of the events we're going to be talking about?

18 A. It was -- I was in pain.

19 Q. Okay. That was your pre-existing
20 medical injuries you're saying?

21 A. Right.

22 Q. Okay. That was your shoulder and --
23 was that your shoulder at the time?

24 A. Yes.

25 Q. Okay.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Shoulder and back.

3 Q. Okay. Any other physical health
4 issues that you had at that time?

5 A. No.

6 Q. Okay. And then you were having --
7 did you have any mental health issues before March 29,
8 2013?

9 A. Depression.

10 Q. Okay. How long have you had
11 depression?

12 A. I don't recall.

13 Q. Okay. Is it since childhood?

14 A. Possibly. They never diagnosed me
15 since childhood, but I was assaulted by prison guards in
16 2010 and I did a year in SHU for something I didn't do
17 and the box time did a lot of harm to me emotionally.
18 So I felt upset about the --

19 Q. Okay.

20 A. -- injustice.

21 Q. Okay. So you're saying that you
22 were assaulted by prison staff in 2010?

23 A. Yes.

24 Q. Okay. And then, when was the one
25 year in SHU?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. 2010.

3 Q. Was it after that incident?

4 A. Yes.

5 Q. Okay. And so were you issued a
6 misbehavior report in connection with that incident with
7 the guards?

8 A. Yes.

9 Q. Okay. And then that's when you were
10 sentenced to serve a one-year SHU?

11 A. Right.

12 Q. Where did you serve that sentence?

13 A. Upstate Correctional Facility.

14 Q. So you were there until 2011?

15 A. Yes.

16 Q. Okay. Any other incidents prior to
17 March 29th, 2013?

18 A. No.

19 Q. Were you taking any medications as
20 of March 29th, 2013?

21 A. Naproxen.

22 Q. What were you taking that for?

23 A. For pain.

24 Q. Okay. Were you on any other
25 medications at any of the times for the incidents we're

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 going to be talking about?

3 A. No.

4 Q. Okay. Now, what's your current
5 conviction that you're serving time for?

6 A. Murder, first-degree.

7 Q. Okay. So do you have a conviction
8 for murder in first-degree and attempted murder in
9 first-degree?

10 A. Yes.

11 Q. And what's the date of that
12 conviction?

13 A. 2003, October 2003.

14 Q. Okay. Did that go to trial?

15 A. No.

16 Q. Okay.

17 A. Guilty plea.

18 Q. And what is your sentence?

19 A. Life without parole.

20 Q. Okay. So you have no expected
21 release date, correct?

22 A. Correct.

23 Q. Did you believe that was a fair
24 sentence?

25 A. No.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Were you guilty of the
3 offenses?

4 A. No.

5 Q. But you took the plea.

6 A. Yes.

7 Q. Now, do you have any prior felonies?

8 A. Yes.

9 Q. Okay. How many prior felonies do
10 you have?

11 A. Cocaine possession. I believe
12 that's it.

13 Q. Okay. Was that a conviction for
14 possession of controlled substance in the fifth degree?

15 A. Yes.

16 Q. And when was that conviction?

17 A. I don't recall.

18 Q. 1997 sound right?

19 A. Correct.

20 Q. And you were sentenced to two to
21 four years?

22 A. Correct.

23 Q. And then were you released on
24 parole?

25 A. Yes.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. And then did you come back in after
3 that for a violation?

4 A. Correct.

5 Q. Okay. Do you remember when that
6 was?

7 A. I don't recall.

8 Q. Okay. And then were you released to
9 parole again?

10 A. Correct.

11 Q. Okay. Any violations after that?

12 A. No.

13 Q. Okay. So then when you came in on
14 your current term were you still on parole?

15 A. No.

16 Q. Okay. Any other convictions besides
17 the ones we've just talked about?

18 A. I don't recall. I had -- did county
19 time.

20 Q. Okay. So you're talking about
21 you've had misdemeanor convictions?

22 A. Yes.

23 Q. Okay. Besides those, any other
24 felony convictions?

25 A. No.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. How about any convictions
3 outside of New York State?

4 A. Marijuana possession in New Jersey.

5 Q. Okay. When was that?

6 A. I don't recall.

7 Q. Was it before or after the
8 possession of controlled substance fifth in New York
9 State?

10 A. After.

11 Q. So was it once you were released on
12 parole from that?

13 A. No, actually, I don't -- I don't
14 recall because it was -- it -- prior, it had to be
15 prior.

16 Q. Okay. So prior to 1997?

17 A. Right.

18 Q. Okay. Any other convictions outside
19 of New York besides the one in New Jersey?

20 A. No.

21 Q. Okay. Do you have any other
22 lawsuits?

23 A. Yes.

24 Q. Okay. What are the lawsuits that
25 you have?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. I have a lawsuit for retaliation.

3 Q. Okay. Is that one in federal court?

4 A. Yes.

5 Q. Okay. Do you have the docket

6 number?

7 A. Yes.

8 Q. Okay. What is it?

9 A. 19-CV-10039CS.

10 Q. Okay. Besides that retaliation

11 lawsuit and this lawsuit, do you have any others in

12 federal court?

13 A. Yes.

14 Q. Okay. How many others do you have

15 in federal court?

16 A. I don't recall.

17 Q. Okay. Do you have the docket

18 numbers of your other federal lawsuits?

19 A. Not with me.

20 Q. Okay. And you don't recall how

21 many, I mean, can you estimate how many other federal

22 lawsuits you have?

23 A. Four.

24 Q. Four besides this one and the other

25 one you mentioned?

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2 A. Right.

3 Q. Okay. So you estimate that you've
4 got six total federal?

5 A. Correct.

6 Q. Okay. And those are all ongoing?

7 A. Not -- no.

8 Q. Okay. How many are still open?

9 A. I would say four. And I have an --

10 Q. Okay.

11 A. -- and I have an appeal that's still
12 open for my state lawsuit.

13 Q. Okay. Hang on, let's talk about
14 federal only first, okay. So you have four open federal
15 lawsuits right now, including this one?

16 A. Yes.

17 Q. Okay. What happened for the other
18 federal lawsuits, how were they resolved?

19 A. They're still pending.

20 Q. No, the -- the ones that are no
21 longer pending. You said there's -- there's like, two,
22 correct?

23 A. One. The -- the timing was off. I
24 have to re-submit a declaration saying why I'm late
25 filing it.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So one of them was dismissed?

3 A. Right, unless I can --

4 Q. Okay.

5 A. -- determine why the delay.

6 Q. Okay. And then what about -- was
7 the other one dismissed also? So you've had two
8 dismissed?

9 A. Well, no, I don't -- I don't believe
10 I have any federal lawsuits dismiss yet. They're still
11 pending. I have an assault, and I just filed another
12 assault and one for heat, the heat was turned off and I
13 have this one and I have the assault. So I have
14 basically five.

15 Q. Okay. So there's this one. And
16 then there's one for -- you said the heat was turned
17 off, correct?

18 A. Yes.

19 Q. Okay. When was that approximately,
20 that that happened?

21 A. 2007, '07 -- well, '17. Yeah, '17.

22 Q. Okay. What facility?

23 A. Green Haven.

24 Q. Okay. And then there's three other
25 lawsuits and they're about assaults? Is that what you

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 said?

3 A. Right.

4 Q. Okay. When -- do you remember when
5 approximately those other assaults were?

6 A. I don't recall.

7 Q. Okay. Is one of them the one from
8 2010 that you already mentioned?

9 A. No, I didn't do a federal lawsuit in
10 that one. I did a state lawsuit and it was dismissed
11 for being untimely --.

12 Q. Okay.

13 A. When I tried to file it with the
14 notice of intent and --.

15 Q. All right, that's -- that's fine.
16 That's fine.

17 A. Yeah, I try to file a notice of
18 intent as the claim it's -- as itself, so I didn't get
19 any relief.

20 Q. Okay. Okay. So now you're saying
21 you're suing about three other assaults besides what
22 this lawsuit is about, correct?

23 A. Correct.

24 Q. Okay. And can you estimate at all
25 what time when those assaults occurred?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. I don't recall.

3 Q. Okay. Is it before or after the
4 incidents that we're going to be talking about?

5 A. After.

6 Q. Okay. So those three additional
7 assaults were -- were they after 2014?

8 A. Yes.

9 Q. Okay.

10 A. One -- one was actually 2014, the
11 19-CV-10039 was in 2014.

12 Q. Okay. Do you remember approximately
13 what month?

14 A. September.

15 Q. Okay. Now, did any of those -- did
16 any of those other incidents involve any of the
17 defendants in this case?

18 A. Perry's name was mentioned in this
19 case.

20 Q. No, I'm asking you if any of those
21 other lawsuits that you have in Federal Court, do any of
22 those involve any of the defendants in this case?

23 A. No.

24 Q. Okay.

25 A. But Perry's name was mentioned in

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 the retaliation case.

3 Q. Okay. You're talking about 19-CV-
4 10039?

5 A. Yes.

6 Q. Okay. But you're not suing CO Perry
7 in that lawsuit, correct?

8 A. Correct.

9 Q. Okay. Okay. Now, we've talked
10 about your federal lawsuits. How many state lawsuits
11 have you brought?

12 A. I did one.

13 Q. Okay. I -- and I'm talking about
14 all of the state lawsuits that you've brought. If you -
15 - how many -- how many state court actions have you
16 brought in total?

17 A. Well, I did one. They -- what they
18 did was, it was --.

19 Q. Okay. Are you talking about the
20 lawsuit -- is there --?

21 A. I had --.

22 Q. Let me -- let me -- let me, Mr.
23 Gunn, let me ask you a fresh question. Do you have any
24 state court actions involving the incidents at issue in
25 this case?

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2 A. Yes, they dismissed it. I have --
3 they're -- they're in appeal right now in the Court of
4 appeals. What had happened was, I had four different
5 claims against the defendants and to make --

6 Q. Okay.

7 A. -- life easier during the trial,
8 they did the trial one --.

9 Q. They consolidated them?

10 A. Correct.

11 Q. Okay. So you filed four lawsuits in
12 the Court of claims, is that correct?

13 A. Correct.

14 Q. Okay. Okay. And then they were
15 consolidated, right?

16 A. Correct.

17 Q. Okay. And those cases were tried,
18 right?

19 A. Yes.

20 Q. Okay. So there was a Court of
21 Claims -- Claims trial regarding the March 29th, 2013
22 events, correct?

23 A. Right.

24 Q. Okay. And at that trial, you called
25 witnesses, correct?

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2 A. Yes.

3 Q. And you testified?

4 A. Yes.

5 Q. And all the officers testified?

6 A. Yes.

7 Q. And what was the outcome of that
8 trial?

9 A. Dismissed.

10 Q. Okay. And you received no damages
11 awarded?

12 A. No.

13 Q. Is that correct, no damages award?

14 A. Correct.

15 Q. Okay. Do you remember the judge who
16 presided over that trial?

17 A. Catherine Schaewe (phonetic
18 spelling), how do you pronounce that name?

19 Q. Judge Schaewe?

20 THE REPORTER: Yeah. Your guess is as
21 good as my mine, sorry. I can spell it on the record if
22 you'd like. S-C --

23 MS. MCKAY: No, I -- that sounds familiar
24 --

25 THE REPORTER: Okay.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 MS. MCKAY: -- from what I've seen, yeah.

3 Thank you.

4 THE REPORTER: Yeah.

5 BY MS. MCKAY: (Cont'g.)

6 Q. Okay. Now, besides that. Those
7 four Court of Claims actions, do you have any other
8 state court actions that you've brought about anything,
9 just any other lawsuits?

10 A. Yes.

11 Q. Okay. Approximately how many other
12 state court actions have you brought?

13 A. I brought property claim actions
14 that were dismissed.

15 Q. Okay. Do you have an approximate --

16 A. Several.

17 Q. -- number?

18 A. Several.

19 Q. Okay. Was it over ten?

20 A. No.

21 Q. Okay. Over five?

22 A. Approximately five.

23 Q. Okay. Okay now, I want you to just
24 take a look at some documents. So if you could please
25 take a look at what's been marked as Exhibit One.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Do you recognize that document?

3 A. Yes.

4 Q. Okay. What is that?

5 A. It's my claim.

6 Q. Okay. Is this your original
7 complaint?

8 A. Yes.

9 Q. Okay. You've drafted a number of
10 complaints in this lawsuit, correct?

11 A. Correct.

12 Q. Okay. Now, is this in your
13 handwriting?

14 A. Yes.

15 Q. And are the contents true and
16 accurate?

17 A. Yes.

18 Q. And you've signed this document? I
19 believe it's on page forty-eight of fifty-one, if you
20 look up in the top right-hand corner.

21 A. Yes, I did on --

22 Q. Okay.

23 A. -- page forty-four.

24 Q. Okay. So that's your signature at
25 the bottom of that -- of the page. It says page forty-

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 eight of fifty-one. Is that your signature, Mr. Gunn?

3 A. Right.

4 Q. Okay. And you signed this on March
5 29th, 2016, correct?

6 A. Correct.

7 Q. And did you mail it the same day?

8 A. Yes.

9 Q. And why did you wait so long to file
10 your lawsuit?

11 A. Access to the law library. It's
12 cold. Depression.

13 Q. Okay. And you were aware of the
14 statute of limitations, correct?

15 A. Yes.

16 Q. And how long is the statute of
17 limitations?

18 A. Three years.

19 Q. Okay. And you filed it three years
20 to the date, right?

21 A. I don't know.

22 Q. Okay. I'd like you to take a look
23 at what's been marked as Exhibit Two. I can take One
24 back for now, just stick that in order.

25 Thank you. Do you recognize that

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 document?

3 A. Yes.

4 Q. Okay. Is this your first amended
5 complaint? Mr. Gunn, have you answered the question?

6 A. What's that, I didn't hear it.

7 Q. Is this your -- is the document
8 Exhibit Two, is that your first amended complaint?

9 A. This is my first amended complaint,
10 yes.

11 Q. Okay. And some of it is
12 handwritten. Are those portions in your handwriting?

13 A. Correct.

14 Q. And then there's portions that are
15 typed. Did you type them?

16 A. Yes.

17 Q. Okay. And then, does your signature
18 appear on page one ninety-one?

19 A. Yes, one ninety-one and one ninety-
20 two.

21 Q. Okay. And you had this document
22 notarized?

23 A. No. Yes.

24 Q. And are the contents true and
25 accurate?

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2 A. Correct.

3 Q. Okay. Next, I'd like to have you
4 take a look at what's been marked as the Exhibit Three.
5 Thank you. And here's this. Do you recognize that
6 document?

7 A. Yes.

8 Q. Is that your second amended
9 complaint?

10 A. Yes.

11 Q. Okay. Now, portions of this one are
12 typed. Did you type them?

13 A. Correct.

14 Q. And then portions are handwritten.
15 Are those your handwriting?

16 A. Yes.

17 Q. Okay. And you signed this document,
18 correct, on page one ten? Mr. Gunn?

19 A. Yeah.

20 Q. You signed this document, correct,
21 Exhibit Three?

22 A. Yes. I'm still looking for the
23 page.

24 Q. Okay. I think it's on page one ten.

25 A. Yeah, I found it.

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2 Q. Okay.

3 A. Yeah, I signed it.

4 Q. So you dated at June 1st, 2017?

5 A. Correct.

6 Q. Okay. And are the contents true and
7 accurate?

8 A. Yes.

9 Q. Okay. And you've attached a number
10 of exhibits, correct?

11 A. Correct.

12 Q. Okay. Are those all the documents
13 that you mentioned that you held on to during the
14 incidents?

15 A. Yes.

16 Q. Okay. Now, I'd like you to take a
17 look at what's been marked as Exhibit Four. Where's
18 Four? Do you recognize that document?

19 A. Yes.

20 Q. Okay. And is that your most recent
21 complaint in this lawsuit?

22 A. Yes.

23 Q. Okay. Is that one actually your
24 third amended complaint?

25 A. Yes.

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2 Q. Okay. And that one's handwritten.

3 Did you -- is that your handwriting?

4 A. Correct.

5 Q. Okay. I'm not sure if there's any
6 typewritten portions, but if there are any typewritten,
7 did you type those as well?

8 A. Yes.

9 Q. Okay. And you signed this document,
10 correct?

11 A. Yes.

12 Q. And you dated it June 19th, 2019?

13 A. That's right.

14 Q. Okay. Are the contents of this
15 document true and accurate?

16 A. Correct.

17 Q. Okay. You can set those aside.

18 Thank you. Mr. Gunn?

19 A. Yes.

20 Q. I just want to make sure. It looks
21 like you have documents in front of you. I just want to
22 make sure if -- if -- I'm going to talk to you about
23 those, about your memory of events. And I don't want
24 you to be reading off the documents that are not in
25 evidence that we've not made it an exhibit. Okay? So

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2 what I'd like you to do is just close those and set them
3 to the side, so that we can discuss from your memory.
4 Does that make sense?

5 A. Yes.

6 Q. Okay. So just -- if you can, can
7 you just cover those like just put -- put them away or
8 put your folder over them. There you go. If there's
9 anything that you need to look at, just you can -- you
10 can tell me, but once it's need -- we'll need to note
11 for the record what you're looking at. Does that make
12 sense?

13 A. Uh-huh.

14 Q. Okay. Okay. So now, the events
15 that you're suing about in this lawsuit took place at
16 Elmira Correctional Facility, right?

17 A. Correct.

18 Q. Okay. And that's a maximum security
19 facility?

20 A. Yes.

21 Q. Okay. Now, a number of your claims
22 involved pat frisks, right?

23 A. Yes.

24 Q. Okay. And had you ever been pat
25 frisked in prison before this -- these events?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. Approximately, how many
4 times?

5 A. I don't recall.

6 Q. Okay. Was it a significant number
7 of times or just a couple?

8 A. Several.

9 Q. Would several be under ten?

10 A. No.

11 Q. Okay. Would it be under twenty?

12 A. Yes.

13 Q. Okay. Had you been pat frisked on
14 your prior bid?

15 A. Yes.

16 Q. Okay. Would you agree that pat
17 frisks are a normal part of prison life?

18 A. Correct.

19 Q. Okay. And if you include the prior
20 bid, would you say that it was more than twenty times?
21 Do you have an approximate number of times you're pat
22 frisked?

23 A. Correct.

24 Q. It would be -- sorry, Mr. Gunn, I
25 want to make sure I understand you. Over twenty times

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 if you include both bids?

3 A. Correct.

4 Q. Okay. Was it over thirty times?

5 A. I don't recall.

6 Q. Okay. Do you know the pat frisk
7 procedure?

8 A. Directive 4910.

9 Q. Well, I'm asking -- you having
10 experienced pat frisks, can you describe what the normal
11 pat frisk procedure is?

12 A. Well, you place your hands on the
13 wall.

14 Q. Okay.

15 A. You step back and you allow the
16 officer to pat frisk you.

17 Q. Okay. Well, when do pat frisks take
18 place?

19 A. When there's supervision around,
20 when there was a supervisor.

21 Q. Okay. Do you -- do you know when
22 pat frisks take place?

23 A. Random pat frisk. There's random
24 pat frisk when there is a supervisor, going to and from
25 the yard -- the recreation.

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2 Q. Okay. And when you say the
3 supervisor, if you're going to go see a supervisor, you
4 get pat frisk?

5 A. No. Needs -- there needs to be a
6 supervisor present.

7 Q. Oh, okay. Okay. So you said that
8 pat frisks occur -- random pat frisks, correct?

9 A. Yes.

10 Q. Okay. And then also when you're
11 going to and returning from the rec?

12 A. Correct.

13 Q. Okay. Any other times when pat
14 frisks happened?

15 A. I don't recall.

16 Q. How about visits like this?

17 A. Correct.

18 Q. Okay.

19 A. Yeah, visits.

20 Q. Court appearances?

21 A. Right.

22 Q. And any transports?

23 A. Right.

24 Q. Okay. So you said that the officer
25 tells you to put your hands on the wall. Is that the

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 first step?

3 A. Yes.

4 Q. Okay. And what happens then?

5 A. They began to pat frisk you or tell
6 you to empty your pockets.

7 Q. Okay. So do you empty your pockets
8 or do they?

9 A. It's either/or.

10 Q. Okay. So you might empty your
11 pockets before you put your hands on the wall?

12 A. Correct.

13 Q. Okay. And then what happens once
14 you got your hands on the wall?

15 A. They begin to pat frisk you.

16 Q. Okay. And can you describe what the
17 pat frisking process is?

18 A. They use both of their hands to
19 check for weapons or contraband.

20 Q. Okay. So the purpose of the pat
21 frisk is to look for weapons or contraband on your
22 person?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. And where do they check?

3 A. The extremities and the torso.

4 Q. Okay. Any other spots that they
5 have to check besides your extremities -- and you mean
6 your arms and legs?

7 A. Yes.

8 Q. Okay. Any spots besides your arms,
9 legs and torso?

10 A. Clothing.

11 Q. Okay. Do they -- where do they
12 check your clothing?

13 A. Pockets.

14 Q. Okay. So do they -- do they feel
15 you all over?

16 A. I don't understand.

17 Q. Okay. I'm just wondering do the --
18 you said that they check with their hands, correct?

19 A. Right.

20 Q. Okay. So do they touch you all over
21 to check for contraband or weapons?

22 A. Yes.

23 Q. Okay. And is it normal procedure to
24 check in the groin area?

25 A. No.

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2 Q. Okay. And is it normal procedure to
3 check in the buttocks area?

4 A. No.

5 Q. Okay. And are you aware of any
6 inmates concealing weapons there?

7 A. No.

8 Q. Okay. Okay, so what happens after
9 they rub their hands on you like you've described?

10 A. The pat frisk is over.

11 Q. Okay. What about your shoes?

12 A. They don't normally check the shoes.

13 Q. Okay. Do they ever check the shoes?

14 A. No, I don't recall.

15 Q. So all the pat frisks you've had,
16 they've not checked your shoes?

17 A. Correct.

18 Q. Okay. So what happens once the pat
19 frisk is over?

20 A. They tell you, you can leave the
21 wall.

22 Q. Okay. Do you get your possessions
23 back?

24 A. Correct.

25 Q. Okay. Now, you're accusing the

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 defendants of sexual assault, correct?

3 A. Correct.

4 Q. And you would agree that sexual
5 assault is a serious accusation?

6 A. Very serious.

7 Q. Okay. And now allegations of sexual
8 assault are investigated by the Office of Special
9 Investigations, right?

10 A. Correct.

11 Q. And you've spoken with O.S.I.
12 investigators before? Go ahead.

13 A. I've spoken to Inspector General,
14 Mr. Gessner and he told me he is going to come back but
15 he never came back to speak to me and --.

16 Q. Okay. That's okay, Mr. Gunn. We
17 can get into some of the details. But I'm just asking
18 you -- you -- you're familiar with the O.S.I. process?

19 A. Yeah, I -- I felt that and it was
20 very biased.

21 Q. Okay. Now, the investigation that
22 they do into sexual assault, that's a PREA
23 investigation, right?

24 A. I didn't experience PREA. PREA was
25 -- didn't exist in 2013.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Okay. Now, they did do --
3 they did an investigation into sexual assault
4 allegations, correct, just generally speaking?

5 A. No.

6 Q. Okay. So you're not familiar with -
7 - with their O.S.I. doing investigations in the sexual
8 assaults?

9 A. The O.S.I. investigator told me he's
10 going to come back to speak to me. He never came back
11 to speak to me.

12 Q. Well, Mr. Gunn, we'll talk about the
13 specific O.S.I. investigations relating to your
14 allegations. I'm just asking you generally speaking, as
15 of these events, were you aware that O.S.I. does
16 investigations into sexual assault?

17 A. Yes.

18 Q. Okay. And now, and inmates are
19 keep-locked during the investigation, is that correct?

20 A. No.

21 Q. Okay. And do you know what PREA
22 stands for?

23 A. Prison Rape Elimination Act.

24 Q. Okay. And it's your understanding
25 that PREA investigations were not taking place at any of

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 these times, is that correct?

3 A. Correct.

4 Q. Okay. So how do inmates report a
5 sexual assault?

6 A. You tell a prison guard.

7 Q. All right. So you report it to
8 security?

9 A. I report it to the prison guard.

10 Q. Right. Security officers?

11 A. Yes.

12 Q. Okay. And what about med -- to
13 medical staff?

14 A. I wrote it down on sick call, sick
15 call slip.

16 Q. Okay. So you can also report it to
17 medical staff?

18 A. Right.

19 Q. Is there anybody else that you can
20 report a sexual assault to?

21 A. Mental Health.

22 Q. Okay. When you -- do you see O.M.H.
23 staff regularly?

24 A. Correct.

25 Q. Okay. And are all these staff

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 members doing rounds in your area?

3 A. No.

4 Q. Okay. So how do you -- how do you -
5 - when do you see O.M.H. staff?

6 A. Maybe once a month. And since the
7 lockdown --

8 Q. Okay, do you meet them in your cell?

9 A. -- I haven't seen them, huh?

10 Q. Do they -- do you see them in your
11 cell or do you go somewhere to?

12 A. I'd go somewhere.

13 Q. Okay. And then they have sick call
14 every day, is that correct?

15 A. No.

16 Q. What days do they have sick call?

17 A. Monday, Tuesday, Thursday, Friday.

18 Q. Okay. So they have sick calls four
19 days a week, is this at Elmira?

20 A. Could you just repeat that?

21 Q. Is it -- we're talking about at
22 Elmira, correct?

23 A. Correct.

24 Q. Okay. And you have sick call at
25 Elmira four days a week?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Correct.

3 Q. Okay. What if you need medical care
4 the other days?

5 A. We have to wait until Monday,
6 Tuesday, Thursday and Friday.

7 Q. Okay. Okay. Anybody else that you
8 can report a sexual assault to?

9 A. The clergy.

10 Q. Okay. The clergy staff at the
11 prison? Is that correct?

12 A. Yes.

13 Q. Okay. Anyone else that you can
14 report the sexual assault to?

15 A. I don't believe so.

16 Q. Okay. And now if substantiated,
17 sexual assaults are subject to discipline, correct?

18 A. I don't believe so.

19 Q. Okay. A staff member could lose
20 their job if they committed a sexual assault, correct?

21 A. It hasn't happened so far.

22 Q. Okay. Do you -- well, I'm just
23 asking you if you're -- would sexual assaults if they're
24 -- if they're substantiated, would they be subject to
25 discipline?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. I filed a grievance and nothing
3 happened. I've got retaliated against for filing a
4 grievance. That's what happened.

5 Q. Okay. And once you report a sexual
6 assault, medical staff conducts an examination, right?

7 A. Correct.

8 Q. And then, are you also referred to
9 O.M.H.?

10 A. Yes.

11 Q. Okay. Now, we've talked a little
12 bit about the sick call process. So what are the -- how
13 do you get medical care as an inmate at Elmira?

14 A. You put your sick call slip on the
15 gate.

16 Q. Okay. And is there also an
17 emergency process for medical care?

18 A. Yes.

19 Q. Okay. So when it's sick call, where
20 do you put your -- you fill out a slip, correct?

21 A. Correct.

22 Q. Okay. And where do you put that
23 slip?

24 A. On the gate.

25 Q. All right. And what happens from

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 there?

3 A. Someone picks it up. And if you

4 want --

5 Q. But do you know --

6 A. -- and if you want --

7 Q. -- do you --

8 A. -- emergency sick call, you tell the

9 person guard.

10 Q. Okay. Well, let's just talk about
11 regular sick call first. So you leave that on your gate
12 and then does the -- does the C.O. take it?

13 A. I believe so.

14 Q. Do you know where it goes from
15 there?

16 A. Medical.

17 Q. Okay. Is there a mailbox going to
18 medical?

19 A. I don't recall.

20 Q. And then what happens once you've
21 submitted the sick call request?

22 A. You're scheduled to go on sick call
23 in the morning.

24 Q. Okay. Is it the next morning?

25 A. Correct.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. And what time -- what time is
3 sick call?

4 A. I believe six a.m.

5 Q. Okay. Is there anything in the
6 evening?

7 A. No.

8 Q. Now you said you were taking
9 medications. Did a nurse bring those to you to take?

10 A. No, I get self care.

11 Q. So you would see med -- the medical
12 staff when you needed a refill?

13 A. No. I would just drop a slip in a
14 refill box and I will receive the medication at my cell.

15 Q. Okay. Now, when we're -- you also
16 mentioned emergency medical care. So how do you get
17 that?

18 A. You tell the prison guard. You
19 write it on the slip and you tell the prison guard that
20 you need emergency.

21 Q. Okay. So you still -- you still
22 write a slip, is that correct?

23 A. Correct.

24 Q. Okay. Is that the only time when
25 you've seen medical staff other than if you go to sick

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 call in the morning?

3 A. Then there was call-outs.

4 Q. Okay. So when do you have medical
5 call-outs?

6 A. When you're scheduled to see your
7 medical provider.

8 Q. Okay. And do they sometimes
9 schedule those at sick call?

10 A. No.

11 Q. They never have you see a doctor
12 after sick call?

13 A. Yes.

14 Q. Okay. So when do you get medical
15 call-outs?

16 A. My guess is when the doctor has the
17 opportunity to see you.

18 Q. Okay. Can you ask for a medical
19 call-out?

20 A. Yes.

21 Q. Okay. How do you do that?

22 A. You put in for sick call.

23 Q. Okay. And then what -- how do you
24 get a medical call-out from there?

25 A. Well, it depends on your diagnosis,

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 your -- your ailments and what needs that you're dealing
3 with -- the signs -- your symptoms that you have.

4 Q. Okay. So they do that -- they do an
5 exam and decide if you need to see more medical staff?

6 A. Correct.

7 Q. Okay. So the first date that we're
8 going to be talking about is March 29th, 2013. So
9 describe what happened on that day.

10 A. I was going to recreation and turned
11 the corner coming out of G Block and I cleared the
12 magnetometer. And there was a big guy standing there
13 and he pointed at me.

14 Q. Okay. You said a big guy. Who is
15 that?

16 A. C.O. Perry.

17 Q. Okay. And so where was he standing?

18 A. He was standing off side of the
19 magnetometer.

20 Q. Okay. And approximately where is
21 this within the facility?

22 A. G Block pivot.

23 Q. Okay.

24 A. Laundry -- the laundry room
25 corridor.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. And is that the way that you go to
3 get to rec?

4 A. Correct.

5 Q. Okay. Anyone else present besides
6 C.O. Perry at that time?

7 A. Yes.

8 Q. Okay. Who else was present?

9 A. Chad Beschler.

10 Q. Okay. And what's his title?

11 A. C.O.

12 Q. Okay. So there were two C.O.s
13 there, correct?

14 A. Right, and a sergeant.

15 Q. Okay. And now, were you going to
16 the rec in a group?

17 A. Yes.

18 Q. Okay. Were there other inmates
19 there?

20 A. Not at the moment.

21 Q. Okay. What do you mean by that?

22 A. When I cleared the magnetometer, he
23 pointed at me and told me to get on the wall. The rest
24 of the group went down the corridor and waited to go to
25 rec.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay.

3 A. So I was stopped by myself.

4 Q. Okay. So where -- where were they
5 in relation to you?

6 A. What do you say? Twenty -- twenty,
7 thirty feet down the hallway.

8 Q. Okay. Okay. So describe the
9 hallway. Is it a straight hallway?

10 A. Yes.

11 Q. Okay. And is that also where the
12 pat frisk took place?

13 A. Correct.

14 Q. Okay. And that's where the
15 magnetometer is located?

16 A. Correct.

17 Q. Okay. Any other staff present
18 besides the three officers you mentioned?

19 A. Sergeant Claflin. Sergeant Claflin.

20 Q. Okay. So any other staff members
21 besides C.O. Perry, C.O. Beschler and Sergeant Claflin?

22 A. I don't recall.

23 Q. You -- you don't recall?

24 A. No.

25 Q. Okay. And where were each of them

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 located?

3 A. They were all within the
4 magnetometer area.

5 Q. Do you remember exactly where each
6 one was?

7 A. No, I don't recall.

8 Q. Okay. And so what happened when you
9 went through the magnetometer?

10 A. C.O. Perry pointed at me and told me
11 to get on the wall.

12 Q. Okay. Did it -- it alert anything?

13 A. No. There was no alarm. There was
14 no signal.

15 Q. Okay. Were you randomly selected?

16 A. I -- I wouldn't say I was randomly
17 selected. I would say that C.O. Perry is a sexual
18 predator. And he picked me for his sexual indecencies.

19 Q. Okay. And did you -- you feel that
20 this was a needless pat frisk, correct?

21 A. Correct.

22 Q. Okay. What do you mean by needless
23 pat frisk?

24 A. There was no alarm. There was no
25 signal. I was on my way to the rec. And he picked me

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 because he felt he wanted to become sexually aroused
3 when he'd seen me.

4 Q. Okay. So are you saying that it's
5 needless because the alarm didn't sound?

6 A. Correct.

7 Q. Okay. So you don't believe that a
8 pat frisk was necessary if the alarm didn't sound,
9 right?

10 A. Correct.

11 Q. Okay. So what happened once he told
12 you that you were going to be pat frisked?

13 A. I complied.

14 Q. Okay. So what exactly did he say to
15 you?

16 A. Put your hands on the wall.

17 Q. Okay. And you did so?

18 A. Yes.

19 Q. Okay. Then what happened?

20 A. He began pat frisking me.

21 Q. Okay. Can you describe exactly
22 happened -- what happened?

23 A. He began touching me. My arms,
24 started on top of my arms. And he began squeezing me,
25 squeezed my arms and he worked his way down and --

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So where did he check other -
3 - after he checked your arms?

4 A. He -- he went to my waist and he
5 grabbed my underwear.

6 Q. Okay. Did he do that right after he
7 check your arms?

8 A. Yes.

9 Q. Okay.

10 A. He grabbed my underwear.

11 Q. Okay. Where did he -- where did he
12 grab your underwear?

13 A. From behind.

14 Q. Okay. Is it at the waistband,
15 somewhere else?

16 A. Yes, the waistband.

17 Q. Okay. Okay. So he grabbed it in
18 your back?

19 A. Right.

20 Q. Okay. And then what happened?

21 A. He yanked my underwear up, pulled up
22 my underwear into my rectum --

23 Q. Okay.

24 A. -- very hard. I explained to him
25 that I was in pain. And he told me to shut the fuck up.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. What happened after he pulled
3 your underwear up like that from the back?

4 A. He began to pat frisk my leg.

5 Q. Okay. Both legs?

6 A. Yes. And then --.

7 Q. After he did -- after he checked
8 your legs?

9 A. He grabbed my underwear again and
10 pulled up even harder.

11 Q. Okay. Did he grab your underwear in
12 the same location?

13 A. Yes. And I believe I was saying I'm
14 in pain and he said shut the fuck up. And he took both
15 of his hands and he insert them in my rectum and rubbed
16 back and forth -- back and forth in between my legs,
17 between my butt.

18 Q. Okay.

19 A. And planted his finger in my rectum.

20 Q. Okay. So I want you to explain.

21 Now, so before this, he's holding your underwear
22 waistband. Is that correct?

23 A. Yeah, he pulls -- he pulls it up,
24 all the way up.

25 Q. Okay. And then what did he do with

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 his hands?

3 A. He puts them in my rectum.

4 Q. Okay. So now, is he in any of your
5 clothes or outside of them?

6 A. He's outside.

7 Q. Okay. So what clothes are you
8 wearing at the time?

9 A. State.

10 Q. Okay. So you have a jumpsuit on?

11 A. No.

12 Q. Okay. What do you have on at the
13 time?

14 A. Greens.

15 Q. Okay. So it's separate pants and
16 shirt?

17 A. Yes.

18 Q. Okay. Okay. So now, and then you
19 also have boxers on?

20 A. Correct.

21 Q. Okay. Any other things besides the
22 pants, boxers and the shirt that you're wearing?

23 A. No.

24 Q. Okay. And so then he's still
25 outside of your clothing then, correct, at all times?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. And where -- where does he
4 put his hands?

5 A. Between my legs.

6 Q. Okay. And --?

7 A. Between my butt.

8 Q. Okay. And is it one hand or both
9 hands?

10 A. Both.

11 Q. Okay. And he puts it in your -- in
12 your buttocks?

13 A. Correct.

14 Q. Okay. And what does he do once he
15 puts his hands there?

16 A. He's penetrating my rectum with his
17 finger.

18 Q. Okay. Is it one finger?

19 A. One finger.

20 Q. Okay. Okay, what happens once he
21 does that?

22 A. The sergeant is standing right next
23 to me. And I look at the sergeant and the sergeant --
24 I'm in disbelief -- it's just -- it's just -- I'm --I'm
25 -- I'm at a loss of words.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. And so what happens once --
3 how long does he have his finger there?

4 A. It was -- it was quick, it was --

5 Q. Okay.

6 A. -- going back and forth.

7 Q. So it happens -- is it happen -- it
8 happens instantaneously?

9 A. Right. He's -- he was going back
10 and forth.

11 Q. Okay. He is moving his hands you're
12 saying?

13 A. Yes.

14 Q. Okay. Did the sergeant say anything
15 at the time?

16 A. No. He is blocking everybody from
17 the view whereas everybody is down the hallway and he's
18 standing by with his -- with his body.

19 Q. Okay. He is blocking who?

20 A. The group that's down there waiting
21 to go to rec.

22 Q. Okay. The other inmates?

23 A. Yes.

24 Q. Okay. Okay, and what happens after
25 he puts his finger in you buttocks the way you

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 described?

3 A. He tells me to take it back to my
4 cell.

5 Q. Okay. Is the pat frisk ended at
6 that point?

7 A. Yes.

8 Q. Okay.

9 A. No -- no, that's not true. He -- he
10 checks my sneaker.

11 Q. Okay. So what position --?

12 A. He checks my sneaker. The other --

13 Q. What position are you --?

14 A. -- the other C.O. comes and checks
15 my sneaker. They take my sneakers off and checked both
16 of my sneakers.

17 Q. Okay. I thought you said you had
18 not had your sneakers checked. Is that correct?

19 A. Yeah, until that day --.

20 Q. What do you mean?

21 A. Until that day.

22 Q. Okay. You were saying you've never
23 had your sneakers checked?

24 A. Until that day.

25 Q. Okay. Okay, so what position are

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 you in when they checked your sneakers?

3 A. I'm on the wall.

4 Q. Okay. So you -- are you staying --
5 do you -- are you on the wall the whole time?

6 A. Yes.

7 Q. Okay. And you have your arms, your
8 hands up?

9 A. Yes.

10 Q. Okay. Okay now, who checks your
11 sneakers?

12 A. Beschler assisted with the hand
13 magnetometer. He had a little hand wand that went over
14 -- went across it, so he came over and helped.

15 Q. Okay. So I want to get an idea of
16 where the other officers were, when the pat frisk was
17 taking place. Do you know?

18 A. At the magnetometer.

19 Q. Okay. And how far away from the
20 magnetometer were you?

21 A. Not far.

22 Q. Can you estimate how many feet?

23 A. Two feet.

24 Q. Okay. And where were the -- where
25 was -- where was C.O. Perry when the -- during the pat

1 Gunn v Beschler - 5-26-20 - Darrell Gunn
2 frisk?
3 A. He was right on me.
4 Q. Okay. Was he directly behind you?
5 A. Yes.
6 Q. Okay. And then where is Sergeant
7 Claflin?
8 A. He's right there.
9 Q. Okay. So is he to the left or
10 right?
11 A. To -- to my left.
12 Q. He's to your left?
13 A. Yes.
14 Q. Okay. And how many feet away is he?
15 A. One foot.
16 Q. And what about C.O. Beschler. Where
17 was he located?
18 A. To the magnetometer, about two feet
19 away.
20 Q. Well, where was he -- how far was he
21 from you?
22 A. I couldn't really tell because I was
23 facing the wall.
24 Q. Okay. Do you know was he to your
25 left or your right?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. My right.

3 Q. Okay. Now, which way was it to get
4 to rec from where you were?

5 A. Straight ahead to my left.

6 Q. Okay. Okay, where were the inmates
7 that were lined up?

8 A. To the left.

9 Q. Okay. Further down that hall?

10 A. Correct.

11 Q. Okay. Okay. Now, how long did the
12 sexual assault last?

13 A. I don't recall.

14 Q. Okay. Can you describe -- was it
15 seconds, minutes?

16 A. I don't recall. I'm having
17 nightmares.

18 Q. All right. So you can't provide any
19 estimate of time for how long the sexual assault took?

20 A. When he pat frisked me to the time I
21 got back to my cell, I would say maybe fifteen minutes.

22 Q. Okay. So you're saying the whole --
23 the whole pat frisk until you got back to your cell was
24 fifteen minutes.

25 A. Correct.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So is there any -- besides
3 the penetrating with the finger, is there any other part
4 of the pat frisk that you're saying was sexually
5 assaulting?

6 A. The buttocks -- he was rubbing on my
7 butt.

8 Q. Okay. With his hands you're talking
9 about?

10 A. Yes.

11 Q. Okay. And still from behind he was
12 touching your butt?

13 A. Yes.

14 Q. Okay. Okay. And how long did that
15 -- was he touching your butt -- buttocks for?

16 A. Back and forth for about, I would
17 say, a couple of minutes.

18 Q. Okay. And did the group of inmates
19 stay there the whole time?

20 A. I don't recall.

21 Q. Okay. You don't know if they ended
22 up leaving or not?

23 A. Well, when a sergeant was blocking
24 the view, I'm quite sure there was somebody down there
25 watching.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So during the pat frisk they
3 were there?

4 A. I believe so.

5 Q. Okay. Now, what happened -- tell me
6 how they -- you said they checked your shoes at the end
7 of the pat frisk?

8 A. Correct.

9 Q. Okay. And what -- what happened for
10 the checking your shoes?

11 A. Nothing, no signal, no alarm.

12 Q. Okay. And how did they check the
13 shoes?

14 A. With a handheld magnetometer.

15 Q. Okay. So did they remove your
16 shoes?

17 A. Yes.

18 Q. Okay. And then they checked the
19 shoe with the handheld device?

20 A. Correct.

21 Q. Okay. And then returned the shoes
22 to you? Is that correct? They gave you your shoes
23 back.

24 A. Correct.

25 Q. Did they check both shoes?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Both shoes.

3 Q. Okay. And what happened once you
4 got the shoes back?

5 A. They told to me take it back to the
6 cell.

7 Q. Okay. Who told you that?

8 A. C.O. Perry.

9 Q. Did anyone else say anything to you?

10 A. No.

11 Q. Now, you believe C.O. Perry did this
12 for sexual gratification?

13 A. Yes.

14 Q. Why do you believe that?

15 A. Why else would he sexually assault
16 me?

17 Q. Okay. So the fact that he sexually
18 assaulted you is what you're saying shows that he was
19 doing it for sexual gratification?

20 A. Yes.

21 Q. Any other reasons why you believe
22 that he was doing it for sexual gratification?

23 A. Yeah, because it's not his job
24 description to pat frisk someone without cause and to do
25 hardship to me like that.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So because the magnetometer
3 didn't go off, you're saying?

4 A. Correct.

5 Q. Okay. Now, how exactly was Sergeant
6 Claflin involved?

7 A. He was standing right there.

8 Q. Okay. And he had no physical
9 contact with you?

10 A. None.

11 Q. Okay. And you said that he was
12 about a foot away.

13 A. Correct.

14 Q. Was he there the whole time?

15 A. The whole time.

16 Q. And he said nothing?

17 A. Not a word.

18 Q. Okay. Could Sergeant Claflin see
19 the sexual assault?

20 A. Did he see it?

21 Q. Right.

22 A. Absolutely.

23 Q. Okay. So he knew you were being
24 sexually assaulted?

25 A. He was promoting it.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. What do you mean by that?

3 A. He was -- he stood, he came even
4 closer to block the view of the other people from
5 seeing, he -- he was promoting it. It was --

6 Q. Okay. So when you say --?

7 A. -- it was a -- it was a silence --
8 it was -- it was in silence because a lot of the things
9 get done in silence, and they have a code and he didn't
10 --.

11 Q. Okay. Well, Mr. Gunn, hang on. Let
12 me just -- so you're saying that he promoted the sexual
13 assault by standing between you and the other inmates?

14 A. Yes.

15 Q. Okay. Besides standing between you,
16 was he involved in any other way?

17 A. Yes.

18 Q. Okay. How was he involved?

19 A. When I asked C.O. Perry his name I
20 was walking back to my cell and that's when Beschler
21 kicked me.

22 Q. Okay. So hang on, I just want to
23 understand. We're talking about Sergeant Claflin. Did
24 -- was he involved in any way other than standing
25 between you and the other inmates?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No, he is not preventing them from
3 attacking me.

4 Q. Okay. That's fine. I'm just trying
5 to understand if he was -- if he was involved in doing
6 anything for the pat frisk besides standing there
7 between you. Is that a no?

8 A. I don't recall.

9 Q. Okay. You don't recall if Sergeant
10 Claflin did anything else besides stand there?

11 A. Right.

12 Q. Okay. Okay. Now, you said C.O.
13 Beschler, he used the handheld device to check your
14 shoes, correct?

15 A. Correct.

16 Q. Okay. Was C.O. Beschler involved in
17 any other ways?

18 A. Yes, he kicked me.

19 Q. Okay. So what happened once -- now,
20 you said it was C.O. Perry who told you to return to
21 your cell?

22 A. Correct.

23 Q. Okay. And what happened once he
24 said that?

25 A. I immediately went to my cell.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So you turned back the other
3 way and went that way?

4 A. Correct.

5 Q. Okay. Did you -- were you with
6 anyone else?

7 A. No.

8 Q. Okay. So it was just you returning?

9 A. Right.

10 Q. Okay. So you -- did you get to your
11 cell?

12 A. Eventually, yes, after I got kicked.

13 Q. Okay. So who kicked you?

14 A. Chad Beschler.

15 Q. Okay. Where did he kick you?

16 A. Kicked me in my left shin.

17 Q. Okay. And where -- where did that
18 occur within the facility?

19 A. Right by the magnetometer.

20 Q. Okay. So tell me, was he still near
21 the other officers?

22 A. No, he was by the magnetometer. So
23 when I asked C.O. Perry his name, they automatically
24 started retaliating against me. So I said, what is your
25 name? And he said -- and he said his name is Perry.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 And when I was walking back --

3 Q. Okay. So --

4 A. -- an officer kicked me.

5 Q. So after -- was -- at this time did
6 you have your shoes back on?

7 A. Yes.

8 Q. Okay. And he told you to return to
9 your cell before this conversation?

10 A. Correct.

11 Q. Okay. And then before you -- was it
12 before you went to go back to your cell you asked what
13 his name was?

14 A. Correct.

15 Q. Okay. And why did you ask him his
16 name?

17 A. So I can file a grievance.

18 Q. Okay. And what did he answer?

19 A. Perry.

20 Q. Okay. So he gave you his correct
21 name.

22 A. Correct.

23 Q. Okay. And then what happened once
24 he told you his name?

25 A. I got kicked.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Were you still standing in
3 the same place?

4 A. No.

5 Q. Okay. So had you started walking?

6 A. Correct.

7 Q. Okay. And did you go back through
8 the magnetometer?

9 A. No.

10 Q. Okay. Which way were you walking at
11 this time?

12 A. The other way.

13 Q. Okay. Was it towards your right?

14 A. Right.

15 Q. Okay. So you started walking and
16 then how did you get kicked?

17 A. With his boots.

18 Q. Okay.

19 A. It was a hard kick to my shin.

20 Q. Okay. Did C.O. Beschler say
21 anything to you?

22 A. No.

23 Q. Okay. And do you know why he kicked
24 you?

25 A. He was retaliating because I was

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 going to write CO Perry up and report the sexual
3 assault.

4 Q. Okay. So based on your -- based on
5 your asking him his name?

6 A. Correct.

7 Q. Do you know if C.O. Beschler heard
8 you?

9 A. Excuse me?

10 Q. Do you know if C.O. Beschler heard
11 you?

12 A. Yes.

13 Q. How do you know?

14 A. Because I asked him his name. I
15 asked him his name and I said, "What is your name?"

16 Q. I know. I'm asking you though if
17 C.O. Beschler heard your question to C.O. Perry.

18 A. Yes, he heard me.

19 Q. Okay. Is it based on anything that
20 he said that you know he heard?

21 A. No, because when Perry responded, he
22 said his name loud enough that everybody in the area
23 knew what happened and he was involved.

24 Q. Okay. Okay. And did you say
25 anything to the officer other than what's your name?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. That's it.

3 Q. Okay. And then did you get escorted
4 back to your cell?

5 A. No.

6 Q. Okay. Did you walk there alone?

7 A. Yes.

8 Q. How far away is your cell?

9 A. It's not right in the block, so I
10 couldn't -- I couldn't recall. I wouldn't be able to
11 estimate how far it is. Maybe thirty, forty feet maybe.

12 Q. Okay. Can you see it where -- from
13 where you were -- from the pat frisk, can you see your
14 cell?

15 A. No.

16 Q. Okay. And you said that he
17 practically tripped you, right?

18 A. Correct.

19 Q. What do you mean by that?

20 A. I thought if I lost my balance, they
21 would have probably beat me up.

22 Q. Okay. That's just what you were
23 guessing would have happened?

24 A. Yes, I was in fear.

25 Q. Okay. And then you walked to your

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 cell, correct?

3 A. Correct.

4 Q. And any other incidents after that?

5 A. C.O. Perry came to my cell and I
6 told him, you sexually assaulted me and he said, "If I
7 sexually assaulted you, it would have been worse than
8 that."

9 Q. Okay. When did that conversation
10 take place?

11 A. When he came to my cell after that.

12 Q. Okay. How many minutes later was
13 that?

14 A. I don't recall.

15 Q. Okay. Was it a short time later or
16 hours?

17 A. Hours.

18 Q. Was C.O. Perry working in your --
19 your cell block?

20 A. Correct.

21 Q. Okay. So do you know what job C.O.
22 Perry had that day?

23 A. No.

24 Q. Did you know him prior to March
25 29th, 2013?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No.

3 Q. Okay. So you had no prior problems
4 with him?

5 A. No.

6 Q. Okay. After the pat frisk then, you
7 said -- was it that day or a different day that he
8 talked to you?

9 A. I'm sorry?

10 Q. When he had that conversation with
11 you in your cell, was that the same day as the pat
12 frisk?

13 A. Same day, yes. Same night rather.

14 Q. Okay. So tell me the contents of
15 that conversation.

16 A. I told him I would report the sexual
17 assault.

18 Q. Okay. And then he --?

19 A. And he said to me --.

20 Q. And then he said what in response?

21 A. If it was a sexual assault it
22 would've been worse than that.

23 Q. Okay. Did he say anything else?

24 A. No.

25 Q. Did you say anything else?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No.

3 Q. Do you have any contact with C.O.
4 Perry after that?

5 A. Yes.

6 Q. Okay. When was the next contact you
7 had with him?

8 A. I believe June 13th he sexually
9 assaulted me.

10 Q. Okay. So the next time you had
11 contact with him was the next incident that we'll be
12 talking about in your lawsuit?

13 A. Yeah, because March 29th is the only
14 date that is being recognized, but he sexually assaulted
15 me plenty of times after that.

16 Every time I would go -- go to the yard
17 he would pick me for sexual assault.

18 Q. Okay.

19 A. And --

20 Q. Okay. So you're saying.

21 A. -- this is --

22 Q. But I'm just asking when was the --
23 when was your next contact with C.O. Perry at all. Do
24 you remember?

25 A. Yeah, I believe it was June 13th --

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay.

3 A. -- when he sexually assaulted me.

4 Q. Okay. So did you even see C.O.

5 Perry between those dates after March 29th or was it
6 until June that you -- you didn't see him?

7 A. I don't recall because --

8 Q. Okay.

9 A. -- there was so much retaliation
10 going on.

11 Q. Okay. So the last time -- the next
12 time that you saw him after March 29th, you think was in
13 June of 2013?

14 A. Correct.

15 Q. Okay. Okay. How about Sergeant
16 Claflin? Do you know him before March 29th, 2013?

17 A. No.

18 Q. Okay. So no prior problems with
19 him?

20 A. No.

21 Q. Okay. And any subsequent contact
22 with Sergeant Claflin after March 29th, 2013?

23 A. No.

24 Q. Okay. And how about C.O. Beschler?
25 Do you know him before March 29th, 2013?

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2 A. No.

3 Q. Okay. And did you have any
4 subsequent contact with C.O. Beschler after --

5 A. No.

6 Q. -- this event? Okay. Now, do you
7 have any injuries after this -- the incident on March
8 29th, 2013?

9 A. Yes.

10 Q. Okay. You said that you had a
11 hemorrhoid, correct?

12 A. Correct.

13 Q. Okay. Is it one?

14 A. Yes, yes.

15 Q. Okay. And it was on your rectum?

16 A. Yes.

17 Q. Okay. Do you know was it interior
18 or exterior?

19 A. No, I don't.

20 Q. Do you know if it was visible?

21 A. I believe so.

22 Q. Okay. What -- when did you get the
23 hemorrhoid?

24 A. I don't recall.

25 Q. Okay. So you don't remember when --

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 when it came about?

3 A. Correct.

4 Q. Was it shortly after the pat frisk?

5 A. Correct.

6 Q. Okay. Do you remember if it was
7 days later or hours later?

8 A. Days.

9 Q. Okay. Can you estimate how many
10 days later?

11 A. No.

12 Q. And how long before it healed?

13 A. I'm still getting hemorrhoid.

14 Q. Okay. Well, I'm talking about the
15 one that appeared days later. How long before that
16 healed?

17 A. I don't recall.

18 Q. Okay. That one did heal, correct?

19 A. Correct.

20 Q. Okay. Had you ever had a hemorrhoid
21 before that?

22 A. No.

23 Q. And you said that you have them --
24 have you had them since?

25 A. Correct.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Approximately, how many
3 hemorrhoids have you had since?

4 A. Three.

5 Q. Okay. Now, the hemorrhoid that you
6 had in the days after this event, did you require any
7 medical treatment for it?

8 A. They gave me ointment.

9 Q. Did it help?

10 A. Yes.

11 Q. And it went away?

12 A. Yes.

13 Q. Okay. Any other treatment besides
14 the ointment?

15 A. No.

16 Q. Do you have any medical proof that
17 the hemorrhoid was caused by the pat frisk?

18 A. No.

19 Q. Has any medical staff told you that?

20 A. Well, I believe that happened
21 because right after the sexual assault that's what
22 caused the hemorrhoid.

23 Q. Right. That's because it happened
24 after the assault, correct?

25 A. Right, but it happened not after --

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 not just after the May 29th sexual assault but after
3 another one, the June 4th sexual assault. So it kept
4 reoccurring sexual assaults. There's a pattern here.

5 Q. Okay. But I'm asking you, did any
6 medical staff tell you that the pat frisk was -- was the
7 cause?

8 A. The medical staff told me let me
9 know if C.O. Perry does it to you again. That's what
10 the medical staff told me. They reported to mental
11 health, they referred me to mental health.

12 Q. Okay. So you saw medical for this,
13 correct?

14 A. Yes.

15 Q. Okay. Do you remember when?

16 A. I think it was two days later in the
17 evening. It wasn't in the morning.

18 Q. Okay. And why the delay?

19 A. Because there was no PREA during --
20 there was no PREA initiated in New York State during
21 this time. There was no -- that didn't exist in 2013.

22 Q. Okay. Did you --?

23 A. So I guess they were unprepared.

24 Q. Okay. But did you wait to report
25 the incident?

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2 A. No, I reported it to every officer.

3 I reported to C.O. Perry himself and he told me he would
4 do -- he would assault me even worse than that -- and
5 that's -- that's what's going to happen.

6 Q. Okay. So no medical staff has told
7 you that the pat frisk caused the hemorrhoid, correct?

8 A. I wouldn't say that.

9 Q. Okay. Why -- what's your basis for
10 believing that?

11 A. I will say that the medical staff
12 told me, let me know if C.O. Perry pat frisks you again.

13 Q. Okay. So you -- so you told medical
14 staff what happened during the pat frisk, correct?

15 A. Yes.

16 Q. Okay. And then medical staff told
17 you to tell them -- to go to medical if it happened
18 again?

19 A. No, my medical provider Jill
20 Northrup told me to tell her personally that if C.O.
21 Perry pat frisks me again, tell her personally.

22 Q. Okay. And who is Ms. Northrup?

23 A. My medical provider -- she was my
24 medical provider in Elmira.

25 Q. Okay. Do you know her title?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Nurse Practitioner.

3 Q. Okay. Did she say anything else to
4 you about it besides tell her if it happened again?

5 A. No, she referred me to mental
6 health.

7 Q. Okay. Okay. So after your
8 examination she referred you to mental health?

9 A. Yes.

10 Q. Okay. Any other physical injury
11 besides the hemorrhoid?

12 A. Pain in my shin.

13 Q. Okay. Did you report that to
14 medical?

15 A. No.

16 Q. Why not?

17 A. Because I was worried about the
18 sexual assault.

19 Q. Okay. Did you have -- get any
20 medical -- did you require any medical care for your
21 shin?

22 A. No.

23 Q. Okay. How long did the pain in your
24 shin last?

25 A. I don't recall.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Was it hours?

3 A. Yes.

4 Q. Okay. What other physical injuries?

5 A. None.

6 Q. Okay. Do you remember when your
7 examination took place?

8 A. No, I don't recall.

9 Q. Was it days later?

10 A. Yes.

11 Q. Okay. Now, you're not claiming any
12 permanent injuries, correct?

13 A. Rectum. Hemorrhoids.

14 Q. Okay. So you're claiming that --
15 you're claiming rectal injuries?

16 A. Yeah, my hemorrhoids.

17 Q. Okay. So how -- why do you believe
18 those are permanent?

19 A. I don't know.

20 Q. Okay. So you believe that
21 subsequent hemorrhoids that you got were caused by the
22 March -- March 29th, 2013 incident?

23 A. Correct.

24 Q. Okay. Do you have any medical
25 evidence of that?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. I believe so.

3 Q. Okay. What is your -- what medical
4 evidence do you have?

5 A. The -- Jill Northrup, nurse
6 practitioner, when she discovered the hemorrhoids after
7 the sexual assault.

8 Q. Okay. So that same conversation you
9 had where she told you to tell you if it happened again?

10 A. Yes.

11 Q. Okay. Did Ms. Northrup treat you
12 for any subsequent hemorrhoids?

13 A. No, I was transferred to Green
14 Haven.

15 Q. Okay. Do you remember when?

16 A. August. No, when was I transferred
17 to Green Haven? I don't recall.

18 Q. Okay. It was in 2014 or 2013?

19 A. 2014.

20 Q. You don't recall what month?

21 A. Correct.

22 Q. Do you remember was it in the middle
23 of the year, summer, do you know?

24 A. Yes, I do remember it was --.

25 Q. It's okay if you don't recall. I

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 don't want you to guess.

3 A. Okay.

4 Q. Okay. Now, when were the other --
5 you said you had hemorrhoids three times since then?

6 A. Yes.

7 Q. Okay. When were those?

8 A. I don't recall.

9 Q. You don't recall when?

10 A. No.

11 Q. Okay. Did you get any treatment for
12 those?

13 A. Yes.

14 Q. Okay. What was your treatment?

15 A. The hemorrhoid cream --

16 Q. Okay.

17 A. -- and hemorrhoid patch.

18 Q. Okay. And did they go away?

19 A. Yes.

20 Q. Okay. Any other treatment that you
21 received?

22 A. No.

23 Q. Do you remember who treated you for
24 those?

25 A. Green Haven.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Were they all at Green Haven?

3 A. Yes.

4 Q. Okay. And did any medical staff
5 there tell you that they were caused by the March 29th,
6 2013 incident?

7 A. No.

8 Q. Did they tell you that they were
9 caused by a sexual assault?

10 A. No.

11 Q. So I'm just trying to understand
12 what's the basis for your belief. Was it -- you believe
13 that it was the penetration that caused these?

14 A. Correct.

15 Q. Okay. And do you have any medical
16 proof that that would cause a hemorrhoid?

17 A. No.

18 Q. Okay. Now, are you claiming any
19 non-physical injuries?

20 A. Depression, nightmares.

21 Q. Okay.

22 A. Anxiety, despair.

23 Q. Okay. So -- so now you said
24 depression. Now, you were depressed before this
25 incident, correct?

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2 A. I don't recall.

3 Q. Okay. You don't recall if you had -
4 - I thought you said that you -- you may have been
5 depressed since childhood, correct?

6 A. Correct. They have been -- no one
7 ever diagnosed me.

8 Q. Okay. Did you feel depressed before
9 this incident?

10 A. No.

11 Q. Okay. So you're saying you never
12 felt depressed before this?

13 A. No, not like this.

14 Q. Well, what do you mean by -- I'm
15 just trying to understand. Did you feel any depression
16 before this?

17 A. No.

18 Q. No. Okay. Okay. And what do you
19 mean by not like this?

20 A. It's hopelessness.

21 Q. Okay. And how long did that
22 hopelessness last?

23 A. It still is hopelessness.

24 Q. Okay. So has it changed at all
25 since that time?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No.

3 Q. Okay. You've had no relief in your

4 --

5 A. No.

6 Q. Okay. But you've never been

7 suicidal, correct?

8 A. Correct.

9 Q. Now, you mentioned nightmares. What
10 are those?

11 A. Having pat frisks by C.O. Perry --

12 Q. Okay.

13 A. -- and being assaulted by prison
14 guards.

15 Q. Okay. How frequently do you have
16 nightmares?

17 A. Frequently.

18 Q. Okay. What does that mean?

19 A. Nightly sometimes.

20 Q. Okay. So you're saying you're
21 having nightmares every night?

22 A. Almost.

23 Q. Okay. Do you remember your
24 nightmares?

25 A. Sometimes.

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2 Q. Okay. How do you know you're having
3 them if you don't remember all of them?

4 A. Because I wake up sweat, cold.

5 Q. Okay. So how many of your
6 nightmares do you remember?

7 A. Well, some of them.

8 Q. Well, you said that you have these
9 nightly, so I'm trying to understand how many do you
10 remember?

11 A. Well, some of them.

12 Q. Okay. So sometimes you wake up and
13 you're sweaty, so you believe you've had a nightmare?

14 A. Yeah. Well, I wake up right out of
15 my sleep.

16 Q. Okay. But you don't remember the
17 nightmare?

18 A. Yeah, because it would be a tragic
19 nightmare where you don't want to remember.

20 Q. Okay. Okay. Now, what happens when
21 -- do you go back to sleep?

22 A. Sometimes.

23 Q. Okay. Any other issues involving
24 your nightmares?

25 A. No.

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2 Q. Okay. And you mentioned anxiety,
3 describe that.

4 A. Yes. I have waiting for a long
5 time, problem waiting and twitching.

6 Q. Okay. You're saying, your anxiety
7 makes you twitch?

8 A. Yes.

9 Q. Where?

10 A. My leg.

11 Q. Okay. Just can you describe the
12 twitch?

13 A. It's rapid, very fast.

14 Q. Okay. But what are you doing with
15 your leg when it happens?

16 A. It just won't stop moving.

17 Q. Okay. You stop moving your leg?

18 A. It -- it doesn't stop.

19 Q. Okay. Where does it twitch?

20 A. Between my foot and my leg.

21 Q. Okay. Like are you bouncing your
22 leg up and down?

23 A. Right.

24 Q. Okay. When does that happen?

25 A. All the time. And I have a fear of

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 showers and fear of recreation.

3 Q. Okay. Why is that?

4 A. Because I don't want to get pat
5 frisked because of the episodes that I have previously
6 had with C.O. Perry in Elmira --

7 Q. Okay. Do you --

8 A. -- and they had beat up --.

9 Q. Do you take showers?

10 A. Excuse me?

11 Q. Do you go to showers?

12 A. No, I use to take showers -- I don't
13 take showers anymore.

14 Q. Okay. When did you stop taking
15 showers?

16 A. After the incidents I have been
17 having.

18 Q. So you haven't showered since 2013?

19 A. I wouldn't say 2013, every now and
20 then I would take a shower when it's -- I feel safe, but
21 not on regular --

22 Q. Okay. So you --

23 A. -- basis.

24 Q. Okay. So you've skipped showers
25 since then?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. But then you take them sometimes?

4 A. Correct.

5 Q. Okay. And do you go to rec?

6 A. No.

7 Q. Okay. Do you ever go to rec?

8 A. Never.

9 Q. Have you gone to any rec since this
10 incident?

11 A. Sometimes.

12 Q. Okay. What do you mean by
13 sometimes?

14 A. I used to go to rec in Green Haven
15 until the prison guards told me not to go to rec.

16 Q. Okay. Why did they tell you not to?

17 A. During the pat frisk they told me
18 not to go to rec no more.

19 Q. Okay. What -- what -- what happened
20 during the pat frisk?

21 A. Choke me maybe had my arms on the
22 wall for around six minutes until I was ready to fall,
23 hit my head on the bench.

24 Q. Did you -- did you say somebody
25 choked you?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. So was there a different
4 incident?

5 A. Yes.

6 Q. Okay. And that was at Green Haven?

7 A. Yes.

8 Q. Okay. When approximately was that?

9 A. 2015 --

10 Q. Okay.

11 A. -- July 5th.

12 Q. Okay. And do you have a lawsuit
13 about that?

14 A. Yes.

15 Q. Okay. Is that one that's still
16 pending in federal court?

17 A. That's in state court.

18 Q. Do you have a docket number or
19 anything for that?

20 A. Not with me.

21 Q. Okay. If you have that I would
22 request that within thirty days, okay?

23 A. Okay.

24 Q. Okay. So after that incident at
25 Green Haven in July of 2015 you have not gone to any

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 rec?

3 A. Correct.

4 Q. Okay. What other mental injuries?

5 A. Well, I'm -- I'm working with my new
6 psychiatrist so.

7 BY MS. MCKAY: (Cont'g.)

8 Q. Okay. We can talk about your
9 treatment in a minute. I just want to understand if
10 there is any other injuries.

11 A. That's -- that's about it right now.

12 Q. Okay. So have you received mental
13 health treatment?

14 A. Yes.

15 Q. Okay. What treatment have you
16 received?

17 A. Medication.

18 Q. Okay. That's the meds we already
19 talked about?

20 A. Correct.

21 Q. Okay. Any other meds that you've
22 taken?

23 A. No.

24 Q. Okay. Is it just Prozac?

25 A. Prozac and BuSpar, pro -- Prazosin -

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 - Prazosin --

3 Q. Okay.

4 A. -- and Abilify.

5 Q. Okay. And have you seen O.M.H.
6 staff for these injuries?

7 A. Yes.

8 Q. Okay. Now you said -- you said that
9 you were referred for O.M.H., correct?

10 A. Yes.

11 Q. Okay. And do you remember when you
12 saw O.M.H. staff?

13 A. Yes.

14 Q. When after the incident did you see
15 them?

16 A. I don't recall.

17 Q. Okay. And since that time, how
18 frequently have you seen mental health staff?

19 A. Monthly.

20 Q. Okay. And does it help?

21 A. Well, at first, it didn't help
22 because the therapist -- the clinician was married to a
23 prison guard and he has sexually harassed me so I
24 wouldn't communicate with her. And I explained that to
25 her and I ask the director to change the therapist and

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 she wouldn't.

3 Q. Okay.

4 A. Then I later found out that the
5 director is also married to a prison guard. So it was
6 very scary.

7 Q. Okay. So was it -- were you
8 concerned -- did -- did the therapist say anything to
9 you about that?

10 A. Yes, she said that everything is
11 confidential.

12 Q. Okay. So she told you that she
13 would keep it confidential but you didn't -- you didn't
14 feel comfortable?

15 A. Correct.

16 Q. Okay. Okay. So then how long
17 before the O.M.H. staff were able to help?

18 A. Until I started taking medication.
19 I would never take --

20 Q. Okay.

21 A. -- medication because I felt it was
22 unsafe for me to take medication.

23 Q. Okay. So when did you start -- when
24 did you start taking medication?

25 A. When I got to Green Haven.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. And before that you wouldn't
3 agree to take medication?

4 A. Correct.

5 Q. Okay. And you -- you felt that
6 there was a relationship between your therapist and
7 someone who sexually harassed you, you said?

8 A. Marriage.

9 Q. Okay. Then they were married?

10 A. Yeah. They were married.

11 Q. Okay.

12 A. Mrs. Brush (phonetic spelling) and
13 Mr. Brush. C.O. Brush --

14 Q. Okay.

15 A. -- and Mrs. Brush.

16 Q. And you felt that the person married
17 to the therapist had sexually harassed you?

18 A. Yeah. Yeah. C.O. Brush is married
19 to the clinician Brush.

20 Q. Okay. Okay. So once you started
21 taking the medications it helped?

22 A. Not exactly.

23 Q. Okay. What do you mean by that?

24 A. Because things haven't changed.

25 Things still remained the same.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So there's -- has it helped
3 at all?

4 A. No.

5 Q. Okay. So your medications haven't
6 helped at all?

7 A. I'm still working with the
8 psychiatrists.

9 Q. Okay. So yes or no, has your
10 medication helped at all?

11 Q. A little.

12 Q. Okay. And have the therapy sessions
13 helped at all?

14 A. A little.

15 Q. Okay. Can you estimate how much
16 it's helped?

17 A. Well, the nightmares are becoming
18 more manageable with the medication that I'm taking.
19 And the Pro --

20 Q. Okay.

21 A. -- the Prozac helps with the
22 depression.

23 Q. Okay. And so after this incident,
24 can you -- on a scale of one to ten, how bad were your
25 mental injuries?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Ten.

3 Q. Okay. And since you've received the
4 treatment, what would you estimate from one to ten?

5 A. Seven.

6 Q. Okay. So you would say you're at a
7 seven now?

8 A. Yes.

9 Q. Okay. And would you say you've been
10 at a seven since about when you went to Green Haven and
11 got this treatment?

12 A. No.

13 Q. Okay. What do you mean by that?

14 A. I would say I'm about at seven since
15 I've been in Sing Sing.

16 Q. Okay. When did you get to Sing
17 Sing?

18 A. August.

19 Q. Of 2019?

20 A. Correct

21 Q. Okay. So it was a slow progression
22 since --since you started taking the medications?

23 A. Yes.

24 Q. Okay. Now, you're seeking over
25 fifteen million dollars for the pat frisk, correct?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Correct.

3 Q. Okay. And how did you arrive at
4 that figure?

5 A. I don't know.

6 Q. What do you mean you don't know?

7 A. I just came up with a number.

8 Q. Okay. You just --

9 A. There is no --

10 Q. -- pulled out a number?

11 A. Yeah. There's no numbers available
12 to estimate damages so I just came up with a number.

13 Q. Okay. You say the full extent of
14 injuries cannot be measured, what do you mean by that?

15 A. Because I'm still suffering from
16 pain and injuries. It's still ongoing.

17 Q. And you say you cannot live a normal
18 life anymore, what do you mean by that?

19 A. I can't go to rec. I can't take
20 showers. I have nightmares. Hemorrhoids.

21 Q. Okay. So all that stuff we've --
22 all that stuff we've already talked about, you're
23 saying?

24 A. Yeah. Hemorrhoids.

25 Q. Okay. So what did you do to -- did

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 you report the March 29th, 2013 incident?

3 A. Yes.

4 Q. Okay. What did you do to report it?

5 A. I wrote down on sick call. I told
6 the prison guard Perry and that was it.

7 Q. Okay. Okay. Do you remember when
8 you wrote the sick call slips?

9 A. Yes.

10 Q. When?

11 A. That same day, the same night,
12 rather.

13 Q. Okay. Do you date them?

14 A. Yes.

15 Q. Okay. Do you date them the date
16 that you write them?

17 A. Yes.

18 Q. And then what do you do with -- how
19 many sick call slips did you write or just one?

20 A. I don't recall.

21 Q. Okay. You don't recall if it was
22 one?

23 A. Or two or three because you might
24 not be called for sick call. And I didn't get called
25 for sick call. I went for my examination in the

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 evening.

3 Q. Okay. So you're saying when the
4 exam took place it was in the evening?

5 A. Correct.

6 Q. Okay. Do you remember when
7 approximately what time?

8 A. Seven -- seven or eight p.m. maybe.

9 Q. Okay. But you don't remember
10 exactly?

11 A. Correct.

12 Q. And who did that exam?

13 A. I don't know. I don't recall. Some
14 lady, she was very biased. There were six -- at least
15 six prison guards in the exam room with me so I felt
16 very uncomfortable.

17 Q. Okay. You don't know the name of
18 the medical provider?

19 A. No.

20 Q. Okay. Now when you say you told
21 C.O. Perry, you're just talking about that conversation
22 that you had that you already testified to?

23 A. That I already testified to?

24 Q. Right. You're saying -- you said
25 that -- when I asked you if you reported it, you said

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 you told C.O. Perry, that's the conversation where you
3 said that he told you it could have been worse?

4 A. Correct.

5 Q. Okay. Did you do anything else to
6 report it besides that conversation and the sick call
7 slip?

8 A. No.

9 Q. Okay. Okay. Now what did you do --
10 what did you do with the sick call slip?

11 A. Put it on the gate.

12 Q. Okay. And do you know what happened
13 from there?

14 A. No.

15 Q. Okay. Did an officer take it?

16 A. I don't know.

17 Q. Okay. But after that you got -- you
18 got the exam?

19 A. Yes.

20 Q. Okay. So you got the -- the exam
21 happened because you did the sick call slip, correct?

22 A. Correct.

23 Q. Okay. And now, do you remember what
24 day the exam took place?

25 A. It was approximately a day or two

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 after.

3 Q. Okay. Was it the same day that you
4 submitted the sick call slip?

5 A. It's possible.

6 Q. Okay. Do you remember how much time
7 passed between you submitting the sick call slip and the
8 exam?

9 A. I don't recall.

10 Q. Okay. So what happened during the
11 exam?

12 A. There were five or six prison guards
13 in the room. There was barely enough room for me to be
14 in the room and they took my pants down. And they
15 checked my --.

16 Q. When you say they, who are you
17 talking about?

18 A. The -- there was a female nurse and
19 then there was a male nurse.

20 Q. Okay.

21 A. So they checked -- they checked my
22 rectum and they found that there was no bleeding. There
23 was no abrasion and there was no swelling.

24 Q. Okay. And did they check anywhere
25 else other than your rectum?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No.

3 Q. Okay. Did they ask you where you
4 were injured?

5 A. No.

6 Q. Okay. So how did they know to check
7 your rectum?

8 A. Because I reported the sexual
9 assault.

10 Q. Okay.

11 A. And I wrote in the statement, the
12 sexual assault that I was sexually assaulted by C.O.
13 Perry.

14 Q. Okay. So you described to them
15 where you were sexually assaulted?

16 A. Yes.

17 Q. Okay. And then they looked at those
18 -- that spot?

19 A. Yes.

20 Q. Okay. Okay. Do you remember
21 anything else from the exam?

22 A. Yes, I'm not sure if I filled out
23 the form for an injury report because I'm allowed to
24 fill out the form, what caused my injury. That should
25 be on the record, but --

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. You're --.

3 A. -- it's hard to FOIL -- it's hard to
4 get FOIL records, so I don't know. I was waiting for my
5 medical report and my mental health chart so maybe it's
6 there.

7 Q. Okay. Did you receive any medical
8 treatment?

9 A. Yes, he gave me ice and Tylenol.

10 Q. Okay. Did you use that?

11 A. Yes.

12 Q. Did it help?

13 A. Yes, I was already taking Naproxen.

14 Q. Okay. Do you know if any injuries
15 were visible at the time?

16 A. No. Naproxen kept the swelling
17 down.

18 Q. Okay. No, I'm asking -- you said
19 no, does that mean no, there were no visible injuries?

20 A. Right.

21 Q. Okay. Okay. Now, at any time did
22 you file a grievance about this incident?

23 A. Did I file a grievance?

24 Q. Right.

25 A. Correct.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Actually, if we could, I'd
3 like to have you just take a look at what's been marked
4 as Exhibit Five. Is that the inmate injury report that
5 was completed during that examination?

6 A. Correct.

7 Q. Okay. And you mentioned the portion
8 where you can write it in. Do you see your handwriting
9 on that page?

10 A. Yes.

11 Q. Okay. Is it under inmate's
12 statements there?

13 A. Right.

14 Q. Okay. And that's -- that's in your
15 handwriting?

16 A. Correct.

17 Q. And then it's signed by you as well?

18 A. Right.

19 Q. Okay. And dated 03/31/13?

20 A. Correct.

21 Q. Okay. So the examination, do you
22 know that it -- did it occur on March 31st, 2013?

23 A. Yes.

24 Q. Okay. Okay. You can set that
25 aside. Thank you. Okay. Now, how many grievances did

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 you file about the incident?

3 A. I would say close to a dozen.

4 Q. Well, just specifically about this -
5 - this particular incident on March 29th?

6 A. Oh, March 29th? Two. One for --

7 Q. Okay.

8 A. -- one for Sergeant Claflin and one
9 for C.O. Perry.

10 Q. Okay. So if you could take a look
11 at what's been marked as Exhibit Six. Is that one of
12 the grievances you filed?

13 A. Correct.

14 Q. Okay. And that's your handwriting?

15 A. Yes.

16 Q. And is that document true and
17 accurate?

18 A. Yes.

19 Q. And it's signed by you?

20 A. Yes.

21 Q. You used extra sheets of paper,
22 correct?

23 A. Correct.

24 Q. Okay. Next, taking a look at what's
25 been marked as Exhibit Seven. Sorry. Actually, if we

1 Gunn v Beschler - 5-26-20 - Darrell Gunn
2 can go back just to Exhibit Six for a minute. Is that -
3 - that's the -- you said that you wrote them for
4 different people, which one -- who was this grievance
5 against?

6 A. Sergeant Claflin.

7 Q. Which ones -- Exhibit Six was the
8 one you wrote against Sergeant Claflin?

9 A. Sergeant Claflin is the last two
10 pages. They gave the same number to this --

11 Q. Okay.

12 A. -- to two different grievances.

13 Q. Okay. So -- so Exhibit Six consists
14 of two that they consolidated?

15 A. Yes.

16 Q. Okay. And the first -- the first
17 four pages are a grievance against Perry?

18 A. Correct.

19 Q. And you wrote that on April 11th,
20 2013?

21 A. Correct.

22 Q. And then the last two pages, are
23 those your grievance against Sergeant Claflin?

24 A. Correct.

25 Q. Okay. And you wrote that on April

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 14th, 2013?

3 A. Right.

4 Q. Why did you wait to write these
5 grievances?

6 A. I guess the stress.

7 Q. Well, I don't want you to guess. Do
8 you remember why?

9 A. I don't recall.

10 Q. Okay. That's fine. Okay. So
11 looking next at Exhibit Seven, what's that grievance?

12 A. I was retaliated against. They put
13 me on --.

14 Q. Okay. And how -- how were you
15 retaliated again?

16 A. Put me in keep lock.

17 Q. Okay. So you wrote another
18 grievance against C.O. Perry?

19 A. Yes.

20 Q. Okay. And when were you keep
21 locked?

22 A. On 03/29.

23 Q. Okay. Just that day?

24 A. Yes.

25 Q. And you don't -- do you know why?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. No, I don't. 03/29 --

3 Q. Okay. Is this --

4 A. -- 03/30 and 03/31.

5 Q. Okay. So from 03/29 to 03/31 of

6 2013?

7 A. Yes.

8 Q. Okay. Then is this grievance
9 contained in Exhibit Seven, is that in your handwriting?

10 A. Correct.

11 Q. And it's signed by you?

12 A. Yes.

13 Q. And the contents are true and
14 accurate?

15 A. Yes.

16 Q. And did you write that grievance on
17 April 16th, 2013?

18 A. Yes.

19 Q. And do you remember why you waited
20 until then to write it?

21 A. I don't recall.

22 Q. Okay. Next, I'd like you to take a
23 look at what's been marked as Exhibit Eight. Is that
24 another grievance you wrote?

25 A. Correct.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. So is that in your handwriting?

3 A. Yes.

4 Q. And it's signed by you?

5 A. Yes.

6 Q. And you wrote it on April 18th,

7 2013?

8 A. Yes. This is for C.O. Claflin.

9 Q. Sergeant Claflin?

10 A. No, actually, Beschler. C.O.

11 Beschler --

12 Q. Okay.

13 A. -- for kicking me.

14 Q. C.O. Beschler, you're saying?

15 A. Yes.

16 Q. And again, do you remember why you
17 waited to write it until April 18th, 2013?

18 A. I don't recall.

19 Q. Okay. Now, the other date that you
20 mentioned regarding C.O. Perry, you said was in June of
21 2013, correct?

22 A. Yes.

23 Q. Okay. And now this claim involves,
24 is it another pat frisk?

25 A. Yes.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. You can set that -- you can set that
3 aside. Okay. Now, do you remember exactly what date
4 this occurred?

5 A. No, I don't recall.

6 Q. Okay. June -- June 11th, 2013, does
7 that sound correct?

8 A. Yes.

9 Q. Okay. Okay. So what happened on
10 that day?

11 A. I went to the yard and C.O. Perry
12 picked me out off the line, told me to get on the wall
13 for pat frisk.

14 Q. Okay. So where was this in the
15 facility?

16 A. Outside, by the magnetometer.

17 Q. Okay. So it's a different location
18 than the first pat frisk?

19 A. Yes.

20 Q. Okay. So you were done with rec?

21 A. No, on the way to rec.

22 Q. Okay. Do you go through the
23 magnetometer on your way to rec and back from?

24 A. No, only to. Only -- only to.

25 Q. What do you mean?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. You only go through it once.

3 Q. Okay. But -- oh, okay. So you only
4 go through the magnetometer when you go to rec?

5 A. Right.

6 Q. Okay. You don't go through it when
7 you come back from rec?

8 A. Correct.

9 Q. Okay. So this time you were going -
10 - you were coming back from rec?

11 A. No, was going to rec.

12 Q. Okay. You were still going to,
13 okay. And did you go through the magnetometer?

14 A. Yes.

15 Q. Okay. And did it sound?

16 A. No.

17 Q. Okay. And then what happened?

18 A. He picked me for pat frisk.

19 Q. Okay. What did he say?

20 A. Get on the wall.

21 Q. Okay. Had you been pat frisked
22 anytime since the March 29th, 2013 incident?

23 A. I don't recall.

24 Q. Okay. I'm just trying to
25 understand. Is it like when you would get pat frisked,

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 would it be like a weekly event, monthly?

3 A. No.

4 Q. Okay. So was it ever something that
5 happened regularly or I mean, how frequently would pat
6 frisks happen?

7 A. Well, with this guy, he is a sexual
8 predator so with me it was -- it was all the time.

9 Q. Well, I'm just trying to understand
10 how many -- were you pat frisk by anybody other than
11 C.O. Perry during this time?

12 A. C.O. Shieber.

13 Q. Okay. So were you -- so were there
14 any pat frisks that were conducted that were not -- that
15 are not involved in this lawsuit?

16 A. No.

17 Q. Okay. So all of the pat frisks that
18 you experienced are -- were sexually assaultive, is that
19 correct?

20 A. Correct.

21 Q. Okay. So he told you to get on the
22 wall?

23 A. Yes.

24 Q. And you complied?

25 A. Yes.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. And then what happened?

3 A. He emptied my pockets.

4 Q. Okay. What happened after he
5 emptied your pockets?

6 A. He took my bag.

7 Q. Sorry. What?

8 A. My net bag. I had a net bag with my
9 shower equipment.

10 Q. Okay. Okay. So after he took the
11 bag and emptied your pockets, then what?

12 A. He began pat frisking me.

13 Q. Okay. So where did he pat frisk
14 you?

15 A. Began on my arms, you know,
16 squeezing and touching me in my arms. Then began at my
17 waist, grabbed my underwear, pulled my underwear up,
18 then went down on my leg, squeezing and rubbing my legs
19 and then he took both of his hands and went back and
20 forth trying to penetrate my rectum again.

21 Q. Okay. So did he put -- he out his
22 hands between your buttocks?

23 A. Yes.

24 Q. Okay. Was it one or both hands?

25 A. Both.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. And you say trying to
3 penetrate?

4 A. Yes.

5 Q. What do you mean by that?

6 A. Trying to use his fingers, to go in
7 between my buttohole.

8 Q. Okay. And did he do so?

9 A. No.

10 Q. Okay. So there was no penetration?

11 A. Correct.

12 Q. Okay. And are you -- what were you
13 wearing at the time?

14 A. Range (sic).

15 Q. Okay. Was it pants and boxers?

16 A. Yes.

17 Q. Okay. And was he over your clothes?

18 A. Yes.

19 Q. Okay. So there was no skin to skin
20 contact for this one either?

21 A. Right.

22 Q. Okay. Do you believe that this was
23 another needless pat frisk?

24 A. Absolutely.

25 Q. And you believe that he did this for

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 sexual gratification?

3 A. Yes.

4 Q. Okay. How long would -- did that
5 sexual assault take place?

6 A. A few minutes.

7 Q. Okay. What happened after he
8 touched your buttocks?

9 A. He told me to get my things, to get
10 the fuck out of here.

11 Q. Okay. And then what did you do?

12 A. I got my stuff and I left.

13 Q. Where did you go?

14 A. I went to -- to the -- what they
15 call the -- I forgot the name of the -- the area.

16 Q. Did you go --?

17 A. To the rec area.

18 Q. Okay. So you went to rec after
19 that?

20 A. Yes.

21 Q. So was this pat frisk like the one
22 on March 29th, 2013?

23 A. Yes.

24 Q. Okay. Except he did not penetrate
25 your rectum, correct?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Correct.

3 Q. Did you say anything during that pat
4 -- the pat frisk on June 11th?

5 A. No.

6 Q. Did he say anything?

7 A. No.

8 Q. Okay. Were there any witnesses to
9 the June 11th, 2013 pat frisk?

10 A. There were some sergeants around,
11 but they didn't witness -- they didn't want -- no one
12 wants to be a witness to anything.

13 Q. Okay. How many sergeants?

14 A. I've seen four sergeants, but I
15 could be wrong.

16 Q. Okay.

17 A. There were C.O.s around, standing
18 around. It was a group -- there was a lot of people.

19 Q. So there were -- so there were a lot
20 of people there?

21 A. Yes.

22 Q. Okay. And you described the
23 sergeants, where were they, how far were they?

24 A. A few feet away.

25 Q. Okay. And how about the C.O.s?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Two feet away.

3 Q. Were there any other pat frisks
4 going on?

5 A. Yeah.

6 Q. And were there other inmates there?

7 A. Yeah.

8 Q. Could the people who were in that
9 area see what C.O. Perry was doing?

10 A. Sure, they could see.

11 Q. Okay. And none of them said
12 anything?

13 A. No.

14 Q. None of them did anything to stop
15 him?

16 A. No.

17 Q. Do you know the names of any of the
18 people?

19 A. No.

20 Q. Okay. And then you said you went to
21 rec, correct?

22 A. Yes.

23 Q. For -- during that pat frisk, did
24 they check your shoes?

25 A. No.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. Did you have any injuries
3 from the June 11th, 2013 incident?

4 A. No. Mental injuries.

5 Q. Okay. So no physical injuries?

6 A. No.

7 Q. Okay. And what men -- what mental
8 injuries did you have?

9 A. Depression, anxiety, emotional
10 duress.

11 Q. Okay. Is it what we talked about
12 before?

13 A. Yes.

14 Q. Okay. So you did -- did you see any
15 medical staff for any injuries?

16 A. No. Well, actually, I did. I've
17 seen Jill Northrup.

18 Q. Okay. Do you remember when you saw
19 her?

20 A. The 13th, I think it was.

21 Q. Okay. So that was another -- was it
22 another examination for sexual assault allegation?

23 A. Yes.

24 Q. Okay. Do you know if there was an
25 injury report -- an inmate injury report completed?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. Do you recall if there was
4 one?

5 A. Yes.

6 Q. Okay. Do you have a copy of that?

7 A. Yes.

8 Q. Okay. Within thirty days, could you
9 send me a copy of that inmate injury report? *RQ

10 A. Okay.

11 Q. Do you remember if you wrote on that
12 inmate injury report?

13 A. I didn't.

14 Q. Okay. Did you sign it?

15 A. No.

16 Q. Okay. Do you remember if there were
17 any injuries identified?

18 A. Hemorrhoid. That was when I caught
19 hemorrhoid.

20 Q. Okay. Was that the only injury?

21 A. Yes.

22 Q. Okay. Now you're demanding eight
23 million dollars for this injury -- for this incident.
24 How did you arrive at that figure?

25 A. I don't know.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. So you just picked a number
3 like -- like the other claim?

4 A. Yes.

5 Q. Okay. Did you report this sexual
6 assault?

7 A. Yes.

8 Q. When?

9 A. I don't recall.

10 Q. Okay. How did you report it?

11 A. Sick call. And when I went to the
12 rec area, I tried to report to the prison guards and
13 they told me to get out of here. And I tried to go to
14 the library and they wouldn't let me go to the library.

15 Q. Okay. So you tried to tell a C.O.
16 in the rec area?

17 A. Yes.

18 Q. Do you know who it was?

19 A. No.

20 Q. So do you know who prevented you
21 from reporting it to security?

22 A. No. Some guy at the table. He --
23 he wouldn't let me go to sick call. I mean, he wouldn't
24 let me go to the library.

25 Q. Okay. So while you were in rec, you

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 asked to go to the library?

3 A. Right.

4 Q. Okay. Did you say anything to him
5 other than that you wanted to go to the library?

6 A. Yeah, I wanted to report a sexual
7 assault.

8 Q. Okay. Then did you stay at rec?

9 A. Yes. I couldn't go back, I had to
10 wait --.

11 Q. Okay. How long were you at rec?

12 A. I don't recall.

13 Q. Do you remember what you did at rec?

14 A. I had to wait to go back to my cell.
15 I didn't do anything.

16 Q. Okay. What -- what do you do in the
17 field house?

18 A. Oh, that's what it's called, the
19 field house. I couldn't remember. There is T.V.s.
20 There is track. There is showers. There is telephones.
21 There is a ping pong table. Weights so --.

22 Q. Okay. Do you remember if you used
23 any of those?

24 A. No, I didn't do anything. I tried
25 to go to the library so I could report it, but he

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 wouldn't let me go.

3 Q. Okay. Besides trying to report it
4 to -- to that C.O. or go to the -- the library at that
5 time, did you do anything else to report it?

6 A. Sick call.

7 Q. Okay. Do you remember when you did
8 a sick call slip?

9 A. That evening.

10 Q. Okay. What did you do with the sick
11 call slip?

12 A. Put it on the gate.

13 Q. Okay. Did you request emergency
14 sick call?

15 A. No.

16 Q. After the March 29th incident, did
17 you request emergency sick call?

18 A. No.

19 Q. Okay. So do you remember when the
20 sick call happened?

21 A. I believe the 13th.

22 Q. Okay. And then later that -- later
23 that night you received the exam?

24 A. No, the 13th.

25 Q. Okay. Okay. When -- when on the

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 13th was the exam?

3 A. Either the 13th or the 14th.

4 Q. Do you remember what time of day?

5 A. Yes, it was before noon.

6 Q. Okay. Now, did you have any contact
7 with C.O. Perry after that pat frisk on June 11th, 2013?

8 A. Yes.

9 Q. Okay. When else did you have
10 contact with him?

11 A. He would intimidate me. He harassed
12 me. He was -- he was still pat frisking me. I can't
13 remember the dates, but I was still getting pat frisked
14 by him.

15 Q. Okay. And were those sexually
16 assaultive pat frisks?

17 A. Absolutely.

18 Q. Okay. And approximately how many
19 other times did this happen?

20 A. Four.

21 Q. Okay. Any other contacts with C.O.
22 Perry?

23 A. None.

24 Q. Okay. Now, did you grieve the
25 incident?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. And do you remember how many -- did
4 you file one grievance?

5 A. I believe so.

6 Q. Okay. If you could please take a
7 look at what's been marked as Exhibit Nine. Do you
8 recognize that as the grievance that you wrote?

9 A. Yes.

10 Q. Okay. And you wrote that on June
11 23rd, 2013?

12 A. Yes.

13 Q. And that's in your handwriting?

14 A. Yes.

15 Q. And signed by you?

16 A. Yes.

17 Q. And are the contents of that
18 document true and accurate?

19 A. Yes.

20 Q. And do you remember why you waited
21 until June 23rd to draft this?

22 A. I don't recall.

23 Q. Okay. Did you also report C.O.
24 Perry to the police?

25 A. Yes.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay. When did you do that?

3 A. I don't recall. I also reported him
4 to the district attorney, Chemung County, but they
5 refused to file charges.

6 Q. Okay. So no -- no charges or
7 anything came off the reporting?

8 A. Well, when I was sending out the
9 mail, it came back. It's just -- I was getting
10 overwhelmed with it and --.

11 Q. Okay. Wait. So the documents you -
12 - the reports that you sent out were returned to you?

13 A. Yes.

14 Q. Okay. Did they go to the A.D.A.?

15 A. No. I sent them to the Court. The
16 Court wouldn't forward them.

17 Q. Okay. So you sent the document
18 intended to go to the A.D.A. to the Court?

19 A. Right.

20 Q. Okay. And the Court sent it back to
21 you?

22 A. Right.

23 Q. Okay. And then where did you send
24 the one to the police?

25 A. Troopers.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. Okay.

3 A. State police.

4 Q. And was that returned to you?

5 A. Yeah. They responded with the
6 inspector general.

7 A. Okay. So there -- do you remember -
8 - and you said you don't remember when it was?

9 A. Correct.

10 Q. And why did you write to the state
11 police?

12 A. I wanted to press charges.

13 Q. Did anything come of the letter that
14 you wrote to the police?

15 A. No.

16 Q. Okay. If you could please take a
17 look at what's been marked as Exhibit Ten.

18 Do you recognize that document?

19 A. Yes.

20 Q. Okay. Is this the letter that you
21 wrote to the state police?

22 A. Yes.

23 Q. Okay. Is that in your handwriting?

24 A. Yes.

25 Q. And it's signed by you?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. And the contents are true and
4 accurate?

5 A. Yes.

6 Q. And you wrote that on June 14th,
7 2013?

8 A. Correct.

9 Q. Now are you claiming -- you can set
10 that one aside, we're through with that.

11 Are you claiming that C.O. Perry
12 retaliated against you?

13 A. Yes.

14 Q. Okay. And describe what is your
15 retaliation claim against C.O. Perry?

16 A. Denied me meals. Denied me law
17 library. Denied me recreation.

18 Q. Well, is it --?

19 A. Keep locking.

20 Q. Okay. So are you claiming that this
21 pat frisk was retaliatory or something else?

22 A. Pat frisk is retaliatory too.

23 Q. Okay. So what was this pat -- are
24 you saying that June 11th, 2013 pat frisk was
25 retaliatory?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Correct.

3 Q. Okay. And what was it in
4 retaliation for?

5 A. Reporting the March -- the March
6 29th pat frisk.

7 Q. Okay. Do you have any proof that
8 C.O. Perry did this to retaliate against you?

9 A. When I filed the complaint and the
10 injury report, all the C.O.s there, retaliate --
11 retaliation is normal.

12 Q. So you -- you believe that those
13 other officers told C.O. Perry?

14 A. Absolutely.

15 Q. Okay. But you weren't present for
16 any of that?

17 A. No.

18 Q. Okay.

19 A. They thought it was funny.

20 Q. Any other -- okay. Any other
21 evidence that you believe it was retaliatory?

22 A. No. It's predatory. Not only
23 retaliatory, it's predatory.

24 Q. Okay. Are you talking about how he
25 was doing it for sexual gratification?

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 A. Yes.

3 Q. Okay. Okay. So I think this is a
4 good place for us to stop and then we can resume on
5 another day. Does that sound good?

6 A. Okay.

7 Q. Okay. We can talk about your other
8 incidents on another day if that works, okay?

9 A. All right.

10 Q. Okay. So if I could -- could we
11 hold -- can we hold onto those exhibits and then we'll
12 work on getting another date?

13 THE COURT REPORTER: Okay. Do you want
14 to go off the record now?

15 MS. MCKAY: Yeah. We'll go off. Okay.

16 (Off the record, 1:08 p.m. to 1:11 p.m.)

17 THE COURT REPORTER: Back on the record.

18 BY MS. MCKAY: (Cont'g.)

19 Q. Okay. So Mr. Gunn, I just also
20 wanted to explain to you the process. So as I explained
21 before, the stenographer is going to provide us with a
22 transcript of the proceedings today. And I'm going to
23 provide you with a copy of those and it will have a
24 sheet called an errata sheet on it, okay?

25 A. Uh-huh.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 Q. And that sheet will give you an
3 opportunity -- you can look through and look for any
4 errors and if you see any, like, mistakes or any errors
5 in the transcript, you can write those on there and then
6 sign it and send it to me, okay?

7 A. Okay.

8 Q. So the kinds of errors that I want
9 you to keep an eye out for, sometimes -- they don't
10 happen a lot, but sometimes there'll be a grammatical
11 mistake like, you know, you said one form of night and
12 they wrote knight with a -- with a K.

13 A. Okay.

14 Q. And so we just -- sometimes we will
15 try to note the mistake there. The other thing I want
16 you to just look out for when you review it is to make
17 sure that there is no substantive errors in terms of the
18 way that something was explained if -- if you need to
19 correct something, I need you to tell me as soon as you
20 can, okay?

21 A. Okay.

22 Q. Okay.

23 THE COURT REPORTER: All set?

24 MS. MCKAY: Yes.

25 THE WITNESS: Yeah.

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2 MS. MCKAY: That's great.

3 THE COURT REPORTER: We're off the

4 record.

5 MS. MCKAY: We can go off. Okay.

6 (Off the record, 1:12 p.m.)

7 (The deposition concluded.)

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1 Gunn v Beschler - 5-26-20 - Darrell Gunn

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3 STATE OF)
4 COUNTY OF)

5 I, DARRELL GUNN, have read the foregoing record of
6 my testimony taken at the time and place noted in the heading
7 hereof and do hereby acknowledge:

8 (Please check one)

9 () That it is a true and correct transcript of
10 same.

11 () With the exceptions noted in the attached
12 errata sheet, it is a true and correct transcript of same.

13

14 X
15 DARRELL GUNN

16 Sworn to before me this
17 _____ day of _____ 2020.

18 X
19 _____
20 NOTARY PUBLIC
21 My Commission Expires:
22 _____
23
24
25

1 Gunn v Beschler - 5-26-20 - Darrell Gunn

2

3 I, HANNAH ALLEN, do hereby certify that the foregoing
4 testimony of DARRELL GUNN was taken by me, in the cause, at
5 the time and place, and in the presence of counsel, as stated
6 in the caption hereto, at Page 1 hereof; that before giving
7 testimony said witness was duly sworn to testify the truth,
8 the whole truth and nothing but the truth; that the foregoing
9 typewritten transcription, consisting of pages number 1 to
10 144, inclusive, is a true record prepared by me and completed
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1 Gunn v Beschler - 5-26-20 - Darrell Gunn

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3 Date:
4 Case Name: Gunn v Beschler
 Index Number: 16-CV-6206
5 Deponent: DARRELL GUNN
 Deposition Date: 5-26-20
6 Examining Attorney: Heather McKay

7 Dear Ms. McKay,

8 Please read and make any changes and/or corrections in your
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9 public. Please do so within thirty (30) days. If you fail
10 to sign the transcript within thirty (30) days, it will be
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Date Signed

DARRELL GUNN

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EXHIBIT 2

Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

v

CIVIL ACTION #6:16-CV-06206

CHAD BEDCLER, et al,

Defendants.

X

DEPOSITION OF:	DARRELL GUNN
DATE:	7-22-2020
TIME:	10:00 a.m. to 1:01 p.m.
LOCATION:	Sing Sing Correctional Facility 354 Hunter Street Ossining, New York 10562

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 APPEARANCES:

3 FOR THE PLAINTIFF:

4 DARRELL GUNN, pro se

5

6 FOR THE DEFENDANT:

7 NEW YORK STATE ATTORNEY GENERAL

8 BY: HEATHER MCKAY, A.A.G.

9 144 Exchange Blvd., Suite 200

10 Rochester, New York 14614

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2 (On the record 10:00 a.m.)

3 THE REPORTER: Okay. We are now on the
4 record. It is ten a.m. Would you please raise your
5 right hand? Do you swear or affirm the testimony you're
6 about to give in this cause today is the truth, the
7 whole truth and nothing but the truth?

8 MR. GUNN: Yes.

9 WITNESS; DARRELL GUNN; Sworn

10 THE REPORTER: Can you please state your
11 full name for the record?

12 THE WITNESS: Darrell Gunn.

13 THE REPORTER: Thank you, Mr. Gunn. And
14 a reminder, just keep your voice up again with the mask.
15 Okay?

16 THE WITNESS: Okay.

17 THE REPORTER: Thank you.

18 DIRECT EXAMINATION

19 BY MS. MCKAY:

20 Q. Good morning, Mr. Gunn.

21 A. Good morning.

22 Q. Okay. We are here to complete your
23 deposition. Do you recall meeting with me a couple
24 months ago I think it was?

25 A. Yes. I got the transcripts last

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 night.

3 Q. Okay. Great. So you've had -- have
4 you had a chance to review that transcript?

5 A. Yes.

6 Q. Okay. And did you receive an errata
7 sheet as well?

8 A. Yes.

9 Q. Okay. So you can use that like we
10 talked about last time, use that if you have any things
11 that you need that you would request to be corrected.
12 Do you know if you have any of that right now?

13 A. Yeah. I have it with me right now.

14 Q. Okay. The -- the errata sheet, you
15 do?

16 A. Yeah.

17 Q. Okay. Did you complete that?

18 A. I haven't had it notarized yet.

19 Q. Okay. Okay. That's fine. Once you
20 get it notarized, you can mail it back to me, okay?

21 A. Okay.

22 Q. Okay. Now, I'd like to talk with
23 you about what you labelled as Count Four in your
24 complaint, okay? Mr. Gunn?

25 A. Yes.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. So you described -- now last
3 time we talked about some pat frisks, correct?

4 A. Right.

5 Q. Okay. And those were pat frisks
6 conducted by C.O. Perry?

7 A. Correct.

8 Q. Okay. Now, I'd like to talk with
9 you about a pat frisk conducted by C.O. Harkness. Do
10 you recall that?

11 A. Yes.

12 Q. Okay. Do you remember when this pat
13 frisk was by C.O. Harkness?

14 A. Yes. It was an interview done by
15 Sergeant -- I don't recall his -- the Sergeant's name,
16 but I was going into an interview just like I was going
17 to an interview here and I was being pat frisked.

18 Q. Okay. So were you going into the
19 Sergeant's office?

20 A. Correct.

21 Q. Okay. And is that normally
22 something you would be pat frisked before you go?

23 A. I believe so.

24 Q. Okay. And do you remember why you
25 were going to see the Sergeant?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. For a grievance interview.

3 Q. Okay. Okay. Now, I'd like to talk
4 with you just briefly. Can you describe C.O. Harkness?

5 A. Over three-hundred pounds,
6 approximately thirty-two years old, six feet -- six two.

7 Q. Okay. And do you know what job he
8 had on that day?

9 A. No.

10 Q. Okay. Was this the first that you
11 saw him that day? Was the pat frisk?

12 A. Yes.

13 Q. Okay. And prior to this pat frisk,
14 did you know him?

15 A. No.

16 Q. Okay. So you had no prior problems
17 with him?

18 A. No.

19 Q. Okay. Now, do you remember what
20 date this pat frisk occurred?

21 A. I don't recall.

22 Q. Okay. Do you remember if it was
23 before or after the pat frisk by C.O. Perry?

24 A. After.

25 Q. Okay. Does April 19th, 2013, sound

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 right?

3 A. Correct.

4 Q. Okay. Okay. So tell me what
5 happened when you were pat frisked?

6 A. Well, it was another officer there
7 and the other officer said be careful, he doesn't like
8 pat frisk and they told me to put my hands on --.

9 Q. Okay. Hang on, Mr. Gunn. I just
10 want to ask you -- do you know the name of the other
11 officer?

12 A. No.

13 Q. Okay. Did you know the other
14 officer?

15 A. No. He was an older guy.

16 Q. Okay. And who did he say that to?

17 A. To Harkness.

18 Q. Okay. Did Officer Harkness say
19 anything?

20 A. He said he -- he -- he -- he's okay,
21 he's got it.

22 Q. Okay. And what happened after that
23 unknown officer said that to C.O. Harkness?

24 A. I was ordered to put my hands on the
25 wall.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. Do you remember who gave you
3 that order?

4 A. Harkness.

5 Q. Okay. What happened next?

6 A. I put my hands on the wall.

7 Q. Okay. And once you had your hands
8 on the wall, what happened?

9 A. Harkness began to pat frisk me.

10 Q. Okay. Can you describe the pat
11 frisk?

12 A. He began pat frisking me and putting
13 his pelvis where I could feel him, his whole body on me.

14 Q. Okay. So did he start by doing
15 that?

16 A. Yes.

17 Q. Okay. Did he feel any part of your
18 body when he was starting the pat frisk?

19 A. Yes. He started with my -- with his
20 hands on my arms and he was feeling my arms, and I could
21 feel his penis on my legs, and on my buttocks.

22 Q. Okay. So you're talking about -- he
23 was having his pelvis pressed against you. Is that
24 correct?

25 A. Yes.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. And that was while he was rub
3 -- rubbing his hands on your arms. Is that correct?

4 A. Right.

5 Q. Okay. What other -- was he checking
6 any other part of your body at this -- this time?

7 A. No.

8 Q. Okay. So what -- how long was he
9 pressed up against your pelvis?

10 A. About thirty seconds.

11 Q. Okay. Did he say anything at that
12 time?

13 A. No.

14 Q. Okay. Did you say anything at that
15 time?

16 A. No.

17 Q. Okay. So what happened after that?

18 A. The pat frisk was over.

19 Q. Okay. Okay. Now, you believed that
20 this was -- was for -- why do you -- why did -- do you
21 know why C.O. Harkness did this, pressed his pelvis
22 against you?

23 A. Retaliation.

24 Q. Okay. Do you believe it was for
25 sexual gratification?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Yes.

3 Q. Okay. And why do you believe that?

4 A. Because he was erect.

5 Q. Okay. Did anything else happen when
6 he was -- had his pelvis pressed against you?

7 A. No.

8 Q. Okay. And then the pat frisk ended?

9 A. Correct.

10 Q. Okay. Did he check any other part
11 of your body, like your legs?

12 A. No.

13 Q. How about your shoes? Did he check
14 your shoes?

15 A. No.

16 Q. And he said nothing to you during
17 the pat frisk?

18 A. No.

19 Q. Is that correct?

20 A. Correct.

21 Q. Okay. Were there any witnesses to
22 the pat frisk?

23 A. Another officer that was standing
24 there.

25 Q. Okay. Is that the same unknown

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 officer who spoke to Harkness?

3 A. Correct.

4 Q. Okay. Did that officer say anything
5 during the pat frisk?

6 A. No.

7 Q. But he saw the pat frisk?

8 A. Correct.

9 Q. Were any other people present
10 besides the -- that unknown officer?

11 A. No.

12 Q. That unknown officer, could he see
13 what C.O. Harkness was doing?

14 A. Absolutely.

15 Q. Okay. But he did nothing?

16 A. Did absolutely nothing.

17 Q. What happened after the pat frisk
18 was complete?

19 A. I went into the Sergeant's office.

20 Q. Okay. Did you have any further
21 issue in the Sergeant's office?

22 A. They yelled in there and asked the
23 Sergeant, was he okay.

24 Q. Okay. I'm not sure I understand
25 what -- who -- who yelled?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. I don't know which officer yelled,
3 but they said, are you okay because the door was shut.
4 And he said are you okay in there, Sarge? Do you need -
5 -

6 Q. Okay.

7 A. -- is everything all right?

8 Q. Okay. Anything else -- did the
9 officers say anything else when you were in the
10 Sergeant's office?

11 A. No.

12 Q. Was the Sergeant able to see the pat
13 frisk?

14 A. No.

15 Q. Did you tell the Sergeant anything
16 about what had happened?

17 A. No.

18 Q. Did you complete the interview with
19 the Sergeant?

20 A. Yes.

21 Q. And what happened once you were done
22 with the interview?

23 A. I was in distress and feared for my
24 life because of the retaliation I kept receiving for
25 making complaints and the sexual assaults I kept

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 receiving.

3 Q. Well, I'm just wondering that day
4 when you finished the interview with the Sergeant, what
5 happened after that? Did you go anywhere?

6 A. I went back to my cell.

7 Q. Okay. Did you -- were you escorted
8 there?

9 A. No.

10 Q. Okay. So how did you go back to
11 your cell?

12 A. On my own.

13 Q. Did you see the officers when you
14 left your -- the Sergeant's office?

15 A. No.

16 Q. And how far away is your cell -- was
17 your cell from the Sergeant's office?

18 A. Upstairs, on the second gallery.

19 Q. So you just walked up there
20 yourself?

21 A. Correct.

22 Q. Okay. Now, we can break it down.
23 Did you have any physical injuries from this incident?

24 A. No.

25 Q. Okay. Did you have any injuries?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Mental.

3 Q. Okay. And can you briefly describe
4 your mental injuries you're claiming from the incident
5 with C.O. Harkness?

6 A. Depression, distress and emotional
7 duress, nightmares.

8 Q. Okay. So is it more of what we
9 talked about with respect to the C.O. Perry pat frisk?

10 A. Correct.

11 Q. Did you receive any medical care for
12 injuries relating to this incident -- the pat frisk by
13 C.O. Harkness?

14 A. Mental.

15 Q. I'm just asking any medical care.

16 A. Mental, I take medication.

17 Q. Okay. Did you receive any medical
18 care --

19 A. No.

20 Q. -- from medical staff? Okay. Okay.
21 And you were seeing O.M.H. practitioners?

22 A. Correct.

23 Q. And you continued to see them?

24 A. Yes.

25 Q. Okay. Okay. Now, you indicated in

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 your complaint, you did not file a grievance for this
3 incident, correct?

4 A. Correct.

5 Q. And you did not grieve it because
6 you did not believe it was a prison condition, correct?

7 A. Right.

8 Q. Okay. And you're seeking one
9 million dollars in damages?

10 A. Yes.

11 Q. And how did you arrive at that
12 figure?

13 A. It's just a number.

14 Q. Sorry. I didn't understand that.

15 A. It's just a number.

16 Q. Okay. It's just a number, you're
17 saying?

18 A. Correct.

19 Q. Okay. Okay. Now, I'd like to turn
20 to what you labelled as Count Eight in your complaint,
21 okay?

22 A. Okay.

23 Q. Now, that involves a C.O. Schieber.
24 Can you describe him briefly?

25 A. Schieber is very aggressive, he's --

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 .

3 Q. Well, hang on, Mr. Gunn. I -- just
4 to start, can you give me a physical description of
5 Officer Schieber?

6 A. Six two, two-hundred and twenty
7 pounds. A white male.

8 Q. Okay. Any identifying
9 characteristics like tattoos or scars?

10 A. None. None that I can remember. I
11 got -- I don't recall, brown hair.

12 Q. Okay. And do you know what Officer
13 Schieber's job was at this time?

14 A. I don't recall.

15 Q. Okay. Okay. Now, you are claiming
16 that Officer Schieber conducted a sexual pat frisk as
17 well, correct?

18 A. Yes.

19 Q. Now, prior to that pat frisk, did
20 you know Officer Schieber?

21 A. Yes.

22 Q. Okay. When -- when did you first
23 become familiar with Officer Schieber?

24 A. He was beating up other prisoners in
25 the facility.

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2 Q. Okay. Mr. Gunn, that isn't a time
3 period. I am asking you when did you become familiar
4 with Officer Schieber?

5 A. Well, I was familiar with him when
6 other inmates were complaining about him being --

7 Q. Okay. Do you remember when that
8 was?

9 A. -- barbaric and brutal. Months
10 earlier.

11 Q. Okay. Had you had any contact with
12 Officer Schieber yourself before the pat frisk?

13 A. No.

14 Q. Okay. So you're saying you knew of
15 him before the pat frisk?

16 A. Correct.

17 Q. Okay. Did he work in your area?

18 A. No.

19 Q. Okay. So you personally had no
20 prior problems with Officer Schieber?

21 A. Correct.

22 Q. And you had filed no grievances
23 against Officer Schieber at that time?

24 A. Correct.

25 Q. I just want to go back to the

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 incident regarding Officer Harkness for a quick moment,
3 okay?

4 A. Okay.

5 Q. Did you have any contact with
6 Officer Harkness after that April 2013 pat frisk?

7 A. No.

8 Q. Okay. You never saw him again?

9 A. No.

10 Q. And that's correct?

11 A. Correct.

12 Q. Okay. Do you remember the date of
13 the pat frisk by Officer Schieber?

14 A. I don't recall.

15 Q. Okay. Do you remember where you
16 were going when you were pat frisked by Officer
17 Schieber?

18 A. To the yard.

19 Q. So was it during rec?

20 A. Yes.

21 Q. Okay. Does, for the date, July
22 26th, 2013, sound correct?

23 A. Correct.

24 Q. Do you remember what time of day
25 this pat frisk occurred?

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2 A. Approximately three a.m. -- I mean
3 three p.m.

4 Q. Okay. Where was the pat frisk?

5 A. On the stair -- stairway wall. By
6 the stairway -- stairwell leading to the yard.

7 Q. Okay. Is there a magnetometer
8 there?

9 A. Correct.

10 Q. Okay. And were you on your way to
11 rec?

12 A. Yes.

13 Q. Okay. Did you go through the
14 magnetometer?

15 A. Yes.

16 Q. And you go through that every time
17 you go to rec, correct?

18 A. Correct.

19 Q. Okay. And what happened during the
20 pat frisk?

21 A. He began pat frisking me by my arms.

22 Q. Your arms? Is that what you said?

23 A. Yes.

24 Q. Okay. Did he say anything to you
25 before he started the pat frisk?

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2 A. No. He pointed to me.

3 Q. Okay. Is that how you knew you were
4 selected for a random pat frisk?

5 A. Well, prior to him pointing to me,
6 the prison guards at the magnetometer told him that I'm
7 the one that'd be filing grievances.

8 Q. Okay. So is that the first
9 conversation that you remember?

10 A. Correct.

11 Q. Okay. So was this before or after
12 you went through the magnetometer?

13 A. It was after.

14 Q. Okay. So where did you go once you
15 went through the magnetometer?

16 A. I went to the wall.

17 Q. Okay. Were you getting in line?

18 A. Right. There was a line, he pointed
19 to me and I -- I had to go to the wall.

20 Q. Okay. So were you in line when this
21 officer -- when the officer said that?

22 A. Correct.

23 Q. Okay. And which officer said that?

24 A. I don't know his name.

25 Q. Okay. So how many officers were in

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2 this area?

3 A. I would say four.

4 Q. Okay. Do you know any of them?

5 A. No.

6 Q. One of them you now know was Officer
7 Schieber?

8 A. Correct.

9 Q. Okay. So then there were three
10 other officers besides him?

11 A. Correct.

12 Q. And who said the statement about
13 your grievance?

14 A. The officer at the magneme --
15 magnetometer.

16 Q. Okay. Not Officer Schieber?

17 A. Correct.

18 Q. Okay. And what exactly did that
19 officer say?

20 A. He's the one that'd be filing
21 grievances.

22 Q. Okay. Do you remember any other
23 officers saying anything?

24 A. No. I don't recall.

25 Q. Okay. Did you say anything?

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2 A. No.

3 Q. Did Officer Schieber say anything?

4 A. No.

5 Q. Okay. So what happened after the
6 officer said that?

7 A. He pointed to me to get on the wall.

8 Q. Okay. And who's he?

9 A. Officer Schieber.

10 Q. Okay. Okay. And did you -- where -
11 - where was he ordering you to the wall? The out of
12 line?

13 A. Correct.

14 Q. Okay. So how far did you have to
15 walk to get on the wall?

16 A. Not far, a couple of feet.

17 Q. Okay. And was the line of inmates
18 still there?

19 A. No, they're headed up the stairs
20 towards the yard.

21 Q. Okay. Was anyone else being pat
22 frisked?

23 A. Correct.

24 Q. I -- I'm asking, was anyone else pat
25 frisked?

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2 A. Yes.

3 Q. Okay. Do you remember how many pat
4 frisks were conducted?

5 A. One other one.

6 Q. Okay. Do they always do two?

7 A. There was another officer do --
8 doing a pat frisk and there were two officers at the
9 magne -- magnetometer. So --

10 Q. Okay.

11 A. -- there was --.

12 Q. So were there -- were there three
13 officers there or --?

14 A. There were four.

15 Q. Okay. Two at the magnetometer. One
16 officer was pat frisking someone else. Is that correct?

17 A. Correct.

18 Q. And Officer Schieber pat frisked
19 you?

20 A. Correct.

21 Q. Okay. Okay. So describe the --
22 what happened for the pat frisk?

23 A. I had my hands on the wall. He
24 began pat frisking me -- my arms and then he came down
25 on my waist area, and he went to my butthole and tried

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2 to penetrate my buttohole.

3 Q. Okay. Did you have clothes on?

4 A. Correct.

5 Q. With pants and boxers?

6 A. Yes.

7 Q. Okay. Was there any skin to skin

8 contact with Officer Schieber?

9 A. No.

10 Q. Okay. Was there any penetration?

11 A. Briefly.

12 Q. Okay. Can you estimate how long

13 that lasted?

14 A. It caused a bowel movement.

15 Q. Can you estimate how long you were

16 penetrated?

17 A. Two seconds.

18 Q. Okay. Now, what do you mean it

19 caused a bowel movement?

20 A. I had to use the bathroom.

21 Q. Okay. Did you -- did you use the

22 bathroom?

23 A. Yes.

24 Q. Okay. When?

25 A. On my cell.

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2 Q. Okay. So did you go right there?

3 A. On the way down towards -- when I
4 was walking back to my cell.

5 Q. Okay. Okay. So you're saying you
6 had an accident?

7 A. Correct.

8 Q. Before the pat frisk, do you -- did
9 you empty your pockets?

10 A. I put my belongings on the table.

11 Q. Okay. And did this pat frisk start
12 like the others, checking your arms?

13 A. Yes.

14 Q. And then where did he check?

15 A. He checked my buttocks.

16 Q. Okay. Did he check your torso at
17 all?

18 A. I believe so.

19 Q. Okay. Did he check your legs?

20 A. I believe so.

21 Q. Was this pat frisk conducted in the
22 same manner as the other pat frisks we've talked about?

23 A. No.

24 Q. Okay. Well, was it conducted in the
25 same manner as the ones by C.O. Perry?

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2 A. No.

3 Q. Okay. And was it conducted in the
4 same manner as the one by Officer Harkness?

5 A. No.

6 Q. Okay. Okay. How was this one
7 different?

8 A. He was looking for contraband in my
9 rectum as if I had planted something in my rectum.

10 Q. Okay. And so -- now, all the pat
11 frisks are looking for contraband, right?

12 A. All of them?

13 Q. I'm just asking you, pat frisks in
14 general are looking for contraband, right?

15 A. I believe so.

16 Q. Okay. And you're familiar with the
17 fact that contraband gets into prison, right?

18 A. Yes.

19 Q. So -- and they're looking for drugs,
20 weapons, that sort of thing?

21 A. Correct.

22 Q. Okay.

23 A. And --.

24 Q. Now --.

25 A. And --.

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2 Q. Did -- when we talked about Officer
3 Schieber, did he say anything to you during the pat
4 frisk?

5 A. No.

6 Q. Okay. Did you say anything to him?

7 A. I asked him what his name was.

8 Q. Okay. And was that during the pat
9 frisk?

10 A. After.

11 Q. Okay. So did you say anything
12 during the pat frisk?

13 A. No.

14 Q. Okay. So what happened at the end
15 of the pat frisk?

16 A. I asked him what his name was.

17 Q. Okay. And did -- did Officer
18 Schieber respond?

19 A. Yes.

20 Q. What did he say?

21 A. Schieber and he spelled it. Well,
22 first -- first he told me to get my stuff.

23 Q. Okay. And what happened after he
24 told you to get your stuff?

25 A. I asked him his name.

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2 Q. Okay. And what happened after you
3 asked him that?

4 A. He wanted to know why I wanted to
5 know his name.

6 Q. Okay. Did he say anything to you
7 about that?

8 A. He said -- no, he -- he just wanted
9 to know why I -- he asked me why do you want to know my
10 name. And I said --

11 Q. Okay. So and --.

12 A. -- you touched my asshole.

13 Q. Okay. So what -- he asked you why
14 you wanted to know his name?

15 A. I said you touched my asshole.

16 Q. Okay. Hang on, Mr. Gunn. You're
17 stepping ahead. I'm asking you, Officer Schieber asked
18 you in response why you wanted to know his name?

19 A. Correct.

20 Q. Okay. And then what did you say in
21 response?

22 A. You touched my asshole.

23 Q. Okay. And what did he say in
24 response to that?

25 A. Schieber.

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2 Q. Okay. And you said he also spelled
3 his name?

4 A. Correct.

5 Q. Okay. Did he say anything else to
6 you?

7 A. To get back to my cell.

8 Q. Okay. Did you say anything else to
9 him?

10 A. No.

11 Q. Okay. So did you go to rec?

12 A. No, I went back to my cell. I had a
13 -- I had a bowel movement.

14 Q. Okay. Were you able to go back --
15 were you able to go to rec at that point?

16 A. No.

17 Q. Okay. Do you know why he ordered
18 you back to your cell?

19 A. No.

20 Q. Did you tell him you needed to use
21 the bathroom?

22 A. No.

23 Q. Okay. Did you have any further
24 contact with Officer Schieber that day?

25 A. He refused to give me chow and my

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2 law library callout.

3 Q. Okay. Was that that day?

4 A. Correct.

5 Q. Okay. What do you mean that he
6 refused to do that?

7 A. He took the list for -- for that
8 company that night for you to sign up for the activities
9 and he refused to give me what I put down for, I put
10 down for chow and law library.

11 Q. Okay. So when you say chow, does
12 that mean you couldn't go to the mess hall?

13 A. Correct.

14 Q. Okay. Did they bring you a tray?

15 A. No.

16 Q. So what did you do for eat -- to eat
17 that night?

18 A. I didn't eat.

19 Q. Okay. Okay. Now, how do you know
20 that Officer Schieber prevented you from going to the
21 law library and chow?

22 A. Because I got legal mail that night
23 and I asked the officer why I didn't go to the law
24 library and I didn't receive chow, and he said that I
25 was keep lock.

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2 Q. Okay. Do you know which officer
3 said that?

4 A. No. The officer that gave out legal
5 mail was the officer who said that.

6 Q. Okay. Do you know how he knew that
7 you were keep lock?

8 A. No.

9 Q. Was that officer working in your
10 area? That was giving out legal mail?

11 A. Yes.

12 Q. What about Officer Schieber, was he
13 working in your area?

14 A. I don't recall.

15 Q. All right. Now, you described three
16 other officers who were present but -- during the pat
17 frisk by Officer Schieber, did they say anything during
18 it?

19 A. Nothing at all.

20 Q. Did they see that -- what he was
21 doing during the pat frisk?

22 A. Well, I don't recall because there
23 were other inmates going to the yard.

24 Q. Okay. So you're not sure if anyone
25 saw the pat frisk?

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2 A. Correct.

3 Q. Okay. Okay. Do you believe that
4 Officer Schieber retaliated against you?

5 A. Correct.

6 Q. Okay. And what -- why do you
7 believe that?

8 A. Because I filed grievances against
9 C.O. Perry, C.O. Taylor, C.O. Brash and other grievances
10 and I filed a sexual assault.

11 Q. Okay. So you're talking about all
12 of the -- any grievance that you filed regarding sexual
13 assault during a pat frisk?

14 A. And retaliation, because there was a
15 lot of retaliation going on.

16 Q. Were all of your grievances
17 regarding sexual assault relating to pat frisks?

18 A. Yes.

19 Q. Okay. Tell me what the process is,
20 do you have to sign up for chow or are you just
21 automatically going to go?

22 A. You have to sign up for it.

23 Q. Okay. Do you sign up for it every
24 day?

25 A. Yes.

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2 Q. Sorry. My question is: Do you
3 need to sign up for it every day?

4 A. I beg your pardon?

5 Q. Just to clarify my question. Do you
6 need to sign up for chow every day?

7 A. Yes.

8 Q. No, I'm just saying if you want to
9 go to chow, you always have to sign up that day?

10 A. Correct.

11 Q. Okay. Okay. Did you report this
12 pat frisk to anyone?

13 A. Yes.

14 Q. Okay. Who?

15 A. To the C.O. that was at the center
16 gate.

17 Q. Okay. When did you report it?

18 A. On my way back to my cell.

19 Q. Okay. Do you remember who those
20 officers were?

21 A. I don't recall.

22 Q. Okay. Do you remember the
23 conversation you had with them?

24 A. Yes.

25 Q. Okay. What happened?

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2 A. They told me to lift weights, not to
3 come out of my cell, that writing grievances that I was
4 there when I was in the rec and to --.

5 Q. Okay. So this -- so they knew about
6 your grievances too?

7 A. Correct.

8 Q. Was Officer Schieber a part of that
9 conversation?

10 A. No, this was at the center gate.

11 Q. Okay. So you'd already walked away
12 from him?

13 A. Yes.

14 Q. Okay. Now, you received a
15 misbehavior report from Officer Schieber, correct?

16 A. Yes.

17 Q. Now, did you feel that the pat frisk
18 that Officer Schieber did was needless?

19 A. Absolutely.

20 Q. And you believed that because you
21 didn't set off the magnetometer?

22 A. Correct.

23 Q. What about the pat frisk by Officer
24 Harkness, do you believe that was needless?

25 A. Well, I -- I'm not sure.

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2 Q. Okay. All right. I'd like you to
3 take a look at what's been marked -- well, if we could
4 mark it, please. It's got a -- eleven if we could just
5 do Exhibit Eleven, please.

6 Is that the prison disciplinary packet
7 from the misbehavior report issued by Officer Schieber?

8 A. Correct.

9 Q. Okay. And that first page, is that
10 the misbehavior report that you were served with?

11 A. Yes.

12 Q. And it was written by Officer
13 Schieber, correct?

14 A. Yes.

15 Q. And he wrote it on July 26th, 2013?

16 A. Correct.

17 Q. And you were charged with threats
18 towards staff and failure to follow orders?

19 A. Right.

20 Q. Okay. You -- did you attend the
21 hearing on this misbehavior report?

22 A. Yes.

23 Q. It was presided over by a hearing
24 officer?

25 A. Yes.

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2 Q. And you called witnesses?

3 A. Yes.

4 Q. And you testified?

5 A. Yes.

6 Q. And you were found guilty of the
7 charges, correct?

8 A. Correct.

9 Q. And you were sentenced to fifty days
10 keep lock?

11 A. I believe so.

12 Q. Okay. Now, after the pat frisk, did
13 you stare at Officer Schieber in an aggressive manner?

14 A. No.

15 Q. Did you stare at him at all?

16 A. No.

17 Q. Did you state I will have your job?

18 A. No.

19 Q. Did you state just wait until you
20 see me again?

21 A. No.

22 Q. And then you were ordered to return
23 to your cell, correct? Mr. Gunn, you were ordered to
24 return to your cell, correct?

25 A. I was ordered to return to my cell

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2 after I asked him his name.

3 Q. That's fine. I am confirming you
4 were asked to -- you were ordered to go back to your
5 cell, right?

6 A. Correct. It was not in the sense
7 that was narrated in this false misbehavior report.

8 Q. I understand, Mr. Gunn. That's why
9 we went through it piece by piece. So I am just asking
10 you, you see where the misbehavior report separately
11 says inmate was ordered to return to his cell, correct?
12 I'm just asking you if that --?

13 A. Yes.

14 Q. I'm just asking you if that portion
15 of this misbehavior is correct. You were, in fact,
16 ordered to return to your cell?

17 A. Yes.

18 Q. Okay. Now, you claimed that the
19 misbehavior report was retaliatory, correct?

20 A. Yes.

21 Q. Why do you believe that it was
22 retaliatory?

23 A. Because I filed a grievance.

24 Q. Okay. Which grievance are you
25 talking about? Are you talking about the grievance that

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2 you filed in regards to this July pat frisk?

3 A. Correct.

4 Q. Okay. Let's take a look at what's
5 marked as Exhibit Twelve.

6 Okay. Now, do you recognize that as the
7 grievance packet from your grievance?

8 A. Yes.

9 Q. Okay. And the grievance in here,
10 looks like pages four through nine, are those in your
11 handwriting?

12 A. Yes.

13 Q. Okay. And the statements you made
14 in your grievance, are those true and accurate?

15 A. Yes.

16 Q. Okay. And you signed your
17 grievance, correct?

18 A. Yes.

19 Q. Now, it looks like there's a couple
20 of documents. So on page four, did you write that
21 grievance on August 18th, 2015?

22 A. Yes.

23 Q. Okay. And then on page seven, it
24 looks like you wrote another grievance.

25 A. Well, that's an appeal statement to

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2 C.O.R.C.

3 Q. Okay. That's your appeal statement,
4 okay. And you did your appeal on October 30th, 2015?

5 A. Correct.

6 Q. Okay.

7 A. October 30th, 2015.

8 Q. Okay. Now, are you saying that the
9 misbehavior part was in retaliation for this grievance
10 about the July incident?

11 A. Could you -- could you repeat that?

12 Q. Are you saying that -- we talked
13 about your misbehavior report, right?

14 A. Uh-huh.

15 Q. Was the -- are you saying that the
16 misbehavior report was filed -- was written in
17 retaliation for your grievance in Exhibit Twelve?

18 A. No.

19 Q. Okay. What do you mean?

20 A. I believe that he filed a
21 misbehavior report against me because I was going to
22 file a sexual assault claim against him.

23 Q. Okay. So you're saying he was --
24 when he wrote the misbehavior report, he did it because
25 he was worried you would file, you said?

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2 A. Yes.

3 Q. Okay. So do you -- do you have any
4 proof that he was worried about that?

5 A. No.

6 Q. Okay. You don't believe that based
7 on anything that the officer said?

8 A. Right.

9 Q. Okay.

10 A. Well, he -- he told me to take it
11 back to my cell.

12 Q. Right, okay. Okay. Is this your
13 only grievance relating to the July 20 -- July 26th,
14 2013, pat frisk?

15 A. I don't recall.

16 Q. Okay. Do you have a memory of
17 writing any other grievance? You're shaking your head.
18 Is that a no?

19 A. Right.

20 Q. Okay. So you don't have a memory of
21 any other grievance, correct?

22 A. Of other incidents, I have.

23 Q. No, I'm not -- I'm not asking about
24 other incidents, just in regards to the July 2013 pat
25 frisk by Officer Schieber. Do you have any other

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2 grievances?

3 A. I don't recall.

4 Q. Okay. Now, when you're looking at
5 Exhibit Twelve, do you -- is there any memory you have
6 of any documents missing that you wrote regarding that
7 incident?

8 A. No.

9 Q. Okay. So you don't have a specific
10 memory of any other grievances, correct?

11 A. Correct.

12 Q. Okay. Now, did you file -- did you
13 appeal your prison disciplinary determination?

14 A. Yes.

15 Q. Okay. And what was the result of
16 the appeal?

17 A. It was expunged.

18 Q. Okay. Did you appeal to the
19 superintendent first?

20 A. Yes.

21 Q. Okay. And the guilty determination
22 was affirmed at that time, right?

23 A. Correct.

24 Q. Okay. And then did you file an
25 Article 78 proceeding?

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2 A. Right. And that was expunged.

3 Q. Okay. How did you learn of the
4 expunging?

5 A. I went -- I did the process, I went
6 through the Article 78 and I applied --.

7 Q. Right. I'm saying how did -- what
8 notice did you receive that it was expunged?

9 A. From the -- from the C.O.R.C.

10 Q. Did you get any papers about it, do
11 you remember? I don't want you to guess. I'm just
12 asking if you remember.

13 A. Yes.

14 Q. Okay. Do you still have the
15 document you received from the court?

16 A. No, I -- no.

17 Q. Okay.

18 A. And it's lost somewhere.

19 Q. Was it a decision from the court?

20 A. Correct.

21 Q. Okay. And it said that the -- there
22 was no opposition, is that correct?

23 A. No, there was opposition. They
24 expunged the decision.

25 Q. Okay. It said that it had been

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2 administratively reversed?

3 A. Correct.

4 Q. Okay. Okay. Do you know why it was
5 reversed?

6 A. No.

7 Q. Okay.

8 A. I guess there's --.

9 Q. There was -- there was no reason
10 given?

11 A. I guess the --.

12 Q. Well, Mr. Gunn, I don't want you to
13 guess. I'm just asking if you know.

14 A. The attorney general agreed with the
15 disciplinary hearing tape that I had submitted, they --
16 they agreed with --- with me.

17 Q. Okay. Did they send you something
18 that said that?

19 A. I believe so.

20 Q. Okay. How do you know that they
21 agreed with you?

22 A. It was in the pro se catalog where
23 they -- the attorney general are -- I'm saying, I don't
24 -- I don't know how to say it, but they're -- they're
25 are not contending (sic) the --.

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2 Q. Okay. Mr. Gunn, did you -- now, in
3 response -- so you filing the Article 78 in the trial
4 level, correct?

5 A. Uh-huh, yes.

6 Q. Is that -- yes. Okay. And then
7 there was a verified answer in return prepared, right?

8 A. Right.

9 Q. Okay. And the A.G.'s office
10 prepared that. It had all of the documents pertaining
11 to your hearing, correct?

12 A. Correct.

13 Q. Okay. And then it went to the
14 Appellate Division, right?

15 A. Correct.

16 Q. Okay. And then the Appellate
17 Division -- did you ever get a brief -- you never got a
18 brief from the A.G.'s office, correct?

19 A. No.

20 Q. Okay. You -- you prepared a brief,
21 right?

22 A. Right.

23 Q. Okay. And then you received notice
24 in a letter that said that they were administratively
25 reversing it, correct?

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2 A. Right.

3 Q. Okay. That letter didn't say why
4 though, right?

5 A. Right.

6 Q. Okay. They just say we're
7 administratively reversing it?

8 A. Right.

9 Q. Okay. And then they send that to
10 the Court too, correct?

11 A. Correct.

12 Q. Okay. And then the Court issued a
13 decision which is the one that you received, right?

14 A. Yes.

15 Q. Okay. And that said that it had
16 been administratively reversed and therefore it was
17 removed?

18 A. Right.

19 Q. Okay.

20 A. I don't know if it was removed or
21 not, but it was expunged.

22 Q. That's fine. So the Court's
23 decision said that it was administratively reversed so
24 the case was done, right?

25 A. Correct.

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2 Q. Okay. Okay. And the Court didn't
3 provide any other explanation than that, right?

4 A. Right.

5 Q. Okay. And the A.G.'s office didn't
6 provide any other explanation on that, right?

7 A. Right.

8 Q. Okay. Did you have any injuries
9 after the July 26th, 2013, pat frisk?

10 A. No.

11 Q. Okay.

12 A. Just mental injuries.

13 Q. Okay. So you had no physical
14 injuries, correct?

15 A. Correct.

16 Q. Okay. And can -- is your mental
17 injuries the same thing that you described, the
18 depression and the nightmares?

19 A. Yes.

20 Q. Okay.

21 So did you -- so did you continue to see
22 O.M.H. staff?

23 A. Yes.

24 Q. Okay. But you didn't receive any
25 medical care, correct?

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2 A. None.

3 Q. Okay. And you're seeking five
4 million dollars in damages?

5 A. Correct.

6 Q. And how did you arrive with that
7 figure?

8 A. It's just a number.

9 Q. Okay. Okay. Now, we've talked
10 about a couple of pat frisks over this time period. Do
11 you know if C.O. Perry -- do you know anything about
12 whether he knows Officer Harkness?

13 A. I'm quite sure he does.

14 Q. Okay. And what's your basis for
15 believing that?

16 A. There's a brotherhood and --.

17 Q. Well, no -- Mr. Gunn, you wouldn't
18 say that every officer employed at Elmira knows every
19 other officer, right?

20 A. I would say somewhat.

21 Q. Okay. Okay. Do you know if Officer
22 Perry knows Officer Harkness? Have you ever seen them
23 have any contact?

24 A. No.

25 Q. Okay. Have you ever seen any

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 contact between Officer Harkness and Officer Schieber?

3 A. No.

4 Q. Okay. And how about Officer
5 Schieber and Officer Perry, have you ever seen them have
6 any contact?

7 A. No.

8 Q. Okay. So when you say that they
9 know one another, you're talking about like -- because
10 they're C.O.s together at the facility?

11 A. Correct.

12 Q. Okay. Now, did you have -- after
13 this July 2013 pat frisk, did you have any further
14 contact with Officer Schieber?

15 A. Yes.

16 Q. Okay. Was he working in your area
17 later or how did you come across him?

18 A. He would come to my cell and
19 sexually harass me, and --.

20 Q. Okay. Do you know where he was
21 working at the time?

22 A. No.

23 Q. Okay. All right. Now, in Count
24 Nine of your complaint, you're claiming that your cell
25 block was cold. Is that correct?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Yes.

3 Q. Okay. So describe what happened
4 with that.

5 A. There was a -- an officer overnight
6 closing the windows, and someone yelled, don't close the
7 windows and he left the windows open.

8 Q. Okay. So you said it was -- in --
9 at the nighttime?

10 A. During the nighttime, during --.

11 Q. Okay. And do you remember what day
12 that was?

13 A. It was in January, I believe.

14 Q. Okay.

15 A. December or January late -- late
16 December, early January and --.

17 Q. Okay. So you don't remember the
18 exact day?

19 A. Correct.

20 Q. Okay. But it was sometime in late
21 December or early January?

22 A. Right. There was a polar vortex.
23 There was a --

24 Q. Okay.

25 A. -- weather formation.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. So do you know which -- do
3 you know which officer was closing the window?

4 A. No, I don't. He worked the
5 overnight shift and --.

6 Q. Okay. Okay. And do you know who
7 said not to close it?

8 A. The officer that -- well, an inmate
9 told him not to close the windows, so --.

10 Q. Okay. Do you know which inmate?

11 A. No.

12 Q. Okay. And where is the window?

13 A. The cell block windows. They are
14 controlled by one crank -- there are cranks and they
15 control several of the windows and you have to --.

16 Q. Okay. And all these windows located
17 in the hallway?

18 A. In the block, in the cell block.

19 Q. Okay. But there's not any windows
20 in the cells, correct?

21 A. Correct.

22 Q. Okay. So they're out -- are they in
23 the central area of the block, these windows?

24 A. Right. Right, right.

25 Q. Okay.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. The cells are facing the windows.

3 Q. Okay. So how -- how -- can you
4 describe where the window is that you're talking about?

5 A. Three -- about three feet from the
6 cells.

7 Q. Okay. So there's a line of cells,
8 correct?

9 A. Right.

10 Q. Okay. And then is it a hallway?

11 A. Correct.

12 Q. Okay. And then is the window on
13 that hallway?

14 A. Right. On a -- on the wall, there
15 is a wall of windows.

16 Q. Okay. And does every wind -- is
17 there a window for -- lined up with every cell?

18 A. No, there is a wall of windows.

19 Q. Okay. I'm just trying to understand
20 how many windows are there.

21 A. More than a dozen.

22 Q. Okay. All in a row up there?

23 A. Correct.

24 Q. Okay. So how many cells are in the
25 hallway that you were just talking about? If you know.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Maybe -- maybe it's fifty, sixty
3 cells.

4 Q. Okay. And -- but do you know how
5 many -- you said there's maybe a dozen windows along
6 that hallway?

7 A. Right. There is --

8 Q. Okay.

9 A. -- it's pretty much.

10 Q. Okay. Did you hear what the
11 discussion that you're describing when the inmate told
12 the officer not to close it?

13 A. No, it was overnight. I was -- it
14 was sleeping -- I was sleeping and --.

15 Q. Okay. Okay.

16 A. And that's when --.

17 Q. And so how do you -- how do you know
18 that that conversation happened?

19 A. Because the next morning when they
20 changed their shift, the officer told the other officers
21 not to close the windows.

22 Q. The overnight officer told the
23 daytime officers not to close the window?

24 A. Correct.

25 Q. Okay. But I'm asking how do you

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 know about the conversation that the inmate and the
3 overnight officer had?

4 A. Well, that's what the rumor was.

5 Q. Okay. So other inmates told you
6 that?

7 A. Right.

8 Q. Okay. And you said you don't know
9 which inmate it was, correct?

10 A. Correct.

11 Q. Okay. And then when the daytime
12 officers came in and took over, did you hear the
13 overnight officer tell them not to close it?

14 A. No.

15 Q. Okay. So that was based on other
16 people telling -- other inmates telling you that as
17 well?

18 A. Correct.

19 Q. Okay. When did you learn that
20 stuff?

21 A. There was an inmate who was
22 freezing, and he was trying to get the windows closed,
23 and nobody would close the windows. And to make a long
24 story short, Officers Schieber ended up beating up that
25 inmate.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. So how long was the window
3 open?

4 A. Roughly all day and almost all
5 night.

6 Q. Okay. Are you talking about that
7 initial night?

8 A. Right.

9 Q. Okay. So it was left open that
10 night and then it was left open most of that day?

11 A. All of that day until chow. Until
12 they went to eating in chow.

13 Q. Okay.

14 A. Santiago, Sergeant Santiago.

15 Q. Do you have -- do you have an
16 approximate time when you went to chow that night and
17 the window was closed?

18 A. Approximately seven o'clock, that's
19 when the breakfast runs. Officer Santiago, that's the
20 sergeant's name that I had an interview with when C.O.
21 Harkness sexually assaulted me.

22 Q. Okay. So you remember his name now?

23 A. Yes, Santiago.

24 Q. Okay. And is he the one who closed
25 the window?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Yeah, he's the one who ordered the -
3 - ordered to close the windows.

4 Q. Okay. And you said that they closed
5 it when you were at dinner?

6 A. Correct.

7 Q. Okay. And approximately what time
8 was your dinner?

9 A. Six p.m.

10 Q. Okay. Okay. So do you -- the only
11 -- I'm -- I'm trying to understand. Can you see the
12 window from your cell that was open?

13 A. Absolutely, there were -- there were
14 windows open and actually they were open for -- for
15 days.

16 Q. Okay.

17 A. It wasn't just one evening.

18 Q. Okay. I'm not sure I follow because
19 you said that it was closed, correct? That next day?

20 A. It was closed on one evening when
21 Sergeant Santiago came and -- and interjected when
22 Inmate Greene became very agitated that --.

23 Q. Okay. Okay. So did -- what
24 happened after it was closed? Did anything else happen
25 with the windows after that?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. No.

3 Q. Okay. So we can talk a little bit
4 about -- you said it was Inmate Greene, correct?

5 A. Yes.

6 Q. Okay. Now, I'm just trying to
7 understand when you were in your cell, you said there is
8 a whole bunch of windows, right?

9 A. You're right, right, right.

10 Q. And from your cell, can you see all
11 the windows or just some of them?

12 A. You can see most of them.

13 Q. Okay. So do you remember
14 whereabouts your cell was in the hallway that you
15 described?

16 A. I'm in the -- I'm in the front. I
17 was in five cell, so the windows are up top, but the air
18 was so cold, and the wind would blow.

19 If you put sheets up, the sheets will
20 just blow right back into your cell. There was nothing
21 to protect you.

22 Q. Okay. So you're saying that you
23 felt the cold air from the open window, correct?

24 A. Absolutely.

25 Q. Okay. I'm just trying to understand

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 if you could see the window from your cell?

3 A. Absolutely.

4 Q. Okay. So -- so where was your cell
5 located in the hallway that we're talking about?

6 A. Five cell.

7 Q. Okay. So it starts at one?

8 A. Right.

9 Q. Okay. So you're five cells down?

10 A. Right.

11 Q. In a row of fifty or sixty?

12 A. Correct.

13 Q. Okay. And then, can you describe
14 approximately where that window was that was open?

15 A. It was a whole row of windows.

16 Q. Okay.

17 A. I think the whole row -- it was a
18 whole row of windows.

19 Q. Okay. So can you estimate how far
20 the open window was from your cell?

21 A. Four feet, five feet.

22 Q. Okay. Okay. Now, besides the rumor
23 about an inmate wanting the window open, do you -- did
24 you hear any other explanations for why the window was
25 open?

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2 A. No.

3 Q. Okay. Do you know what temperature
4 it was in your cell when the window was open?

5 A. No.

6 Q. Okay. You don't have a thermometer
7 in there?

8 A. Correct.

9 Q. Okay. And approximately how many
10 officers were working in the area when the window was
11 open?

12 A. I would say six.

13 Q. And was anyone else present when the
14 windows were open?

15 A. A lieutenant.

16 Q. Okay. A lieutenant did rounds in
17 the area?

18 A. Correct.

19 Q. Do you know the lieutenant's name?

20 A. No.

21 Q. What time did those rounds take
22 place?

23 A. I don't recall.

24 Q. Okay. Do you remember if it was
25 morning, midday or later?

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2 A. Midday.

3 Q. Okay. Before you went to chow then
4 that night?

5 A. Right.

6 Q. Okay. Did the lieutenant say
7 anything about how the window was open?

8 A. No.

9 Q. Okay. You didn't hear anything?

10 A. The only thing I heard was that the
11 officer ordered the windows to stay open.

12 Q. The overnight officer you're talking
13 about?

14 A. Yes.

15 Q. And you don't know who that officer
16 was, correct?

17 A. No.

18 Q. Okay. Did any medical staff come
19 through the area when the window was open?

20 A. No.

21 Q. What about any mental health staff?

22 A. No.

23 Q. Any other administrators besides the
24 lieutenant?

25 A. No.

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2 Q. Do you remember was there a sick
3 call that day?

4 A. I don't recall.

5 Q. Right. Okay. Now, did you say
6 anything or do anything to report the windows being open
7 personally?

8 A. No.

9 Q. Okay. So you described Inmate
10 Greene, did you witness him complaining about the
11 windows?

12 A. Yes.

13 Q. Okay. And when about was that?

14 A. Every day.

15 Q. Okay. I'm just trying to understand
16 the window -- the day that we're talking about where the
17 window was open, did you -- did you hear them talk about
18 that window?

19 A. Yes.

20 Q. Okay. And do you know who he was
21 talking to?

22 A. Yes.

23 Q. Who was that?

24 A. The officers that were in charge.

25 Q. Okay. So one of the six that you

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 mentioned?

3 A. Correct.

4 Q. Okay. Do you know the name of that

5 officer?

6 A. No.

7 Q. And was Officer Schieber one of the

8 six officers that you described?

9 A. No.

10 Q. Okay. Was Officer Schieber involved

11 at all?

12 A. Yes.

13 Q. Okay. So when did Officer Schieber

14 get involved?

15 A. On the way to rec.

16 Q. Okay. Okay. So what happened when

17 it was time to -- was it time to go to rec or time to go

18 to chow?

19 A. Time to go to rec.

20 Q. Okay. Do you remember what time

21 that was?

22 A. Seven to eight. Seven p.m.

23 Q. Okay. So that was after the window

24 had been closed when you were at chow?

25 A. Correct.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. And that was the first that
3 you saw of Officer Schieber?

4 A. No.

5 Q. No, I'm asking that day when it was
6 time for rec, that was when you first saw him that day?

7 A. I don't recall.

8 Q. Okay. So you don't recall seeing
9 Officer Schieber beforehand?

10 A. No.

11 Q. Is that correct?

12 A. Right.

13 Q. Okay. So then it was time to go to
14 rec around seven p.m. you said?

15 A. Correct.

16 Q. Okay. So what happened at that
17 time?

18 A. We went to rec and they pulled out -
19 - they picked Greene for pat frisk.

20 Q. Okay. And what about you, were you
21 picked for a pat frisk?

22 A. No.

23 Q. Okay.

24 A. Oh, wait, wait a minute. I recall
25 maybe -- I don't recall.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. So you don't recall whether
3 you were pat frisked?

4 A. Right.

5 Q. Okay. When you go to rec, some
6 inmates are pat frisk, correct?

7 A. Correct.

8 Q. Okay. And you're not always
9 selected, right?

10 A. Right.

11 Q. Okay. So sometimes you're selected,
12 sometimes other inmates are selected for a pat frisk?

13 A. Right.

14 Q. Okay. And Officer Schieber was in-
15 charge of doing pat frisks, is that correct? At that --
16 that -- that day we're talking about?

17 A. I don't know if he was in charge,
18 but he picked Greene for a pat frisk.

19 Q. Okay. I'll rephrase it. Officer
20 Schieber -- on the day with the window, Officer Schieber
21 was involved in doing pat frisks?

22 A. Yes.

23 Q. Okay. Was he over at the
24 magnetometer?

25 A. Correct.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Q. Okay. But -- and do you remember if
3 you saw the pat frisk?

4 A. Yes.

5 Q. You -- you did?

6 A. Yes.

7 Q. Okay. So -- but you don't remember
8 if you were pat frisk, correct?

9 A. Correct.

10 Q. Okay. Do you remember what you --
11 how -- where were you during the pat frisk?

12 A. I was observing the pat frisk.

13 Q. Sorry, what was that?

14 A. I stood by lots of pat frisk. I
15 stood by lots of pat frisk.

16 Q. Okay. You were allowed to just
17 stand there?

18 A. Off to a distance.

19 Q. Okay. Were you with any other
20 inmates?

21 A. Yeah, there were several other
22 inmates.

23 Q. Okay. And how many officers?

24 A. It was around six.

25 Q. Okay. And one of those was

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 Schieber?

3 A. Correct.

4 Q. Okay. And did Officer Schieber
5 conduct the pat frisk?

6 A. Yes.

7 Q. All right. Were there other inmates
8 being pat frisked?

9 A. Yes.

10 Q. Okay. Do you remember how many
11 others?

12 A. No.

13 Q. Okay. Okay. And what do you
14 remember about the pat frisk of Inmate Greene?

15 A. That he began pat frisking and he
16 didn't make it back -- he didn't make it to rec. He --
17 he was ordered back to the cell.

18 Q. Okay. Now, you -- do you see the
19 entire pat frisk of Inmate Greene?

20 A. Yes.

21 Q. Okay. And it was done in the same
22 manner as the pat frisk of you, correct, by C.O.
23 Schieber?

24 A. No.

25 Q. Okay. What do you mean by that?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. I mean that C.O. Schieber checked my
3 rectum. I don't believe he checked Mr. Greene's rectum.

4 Q. Okay. So Inmate Greene was -- was
5 the pat frisk of Inmate Greene sexual in anyway?

6 A. No.

7 Q. Okay. So you didn't feel that it
8 was inappropriate, the pat frisk that you saw?

9 A. Not exactly.

10 Q. Okay. I'm just talking about the
11 pat frisk. When you say not exactly, I'm just asking
12 was the pat frisk inappropriate in anyway of Inmate
13 Greene that you witnessed?

14 A. I believe it was needless.

15 Q. Okay. Other than that, the manner
16 in which it was conducted, was it appropriate?

17 A. I seen him touch his groin, his
18 groin area --.

19 Q. Right. Mr. Gunn -- okay. So I
20 asked you if that pat frisk was sexual?

21 A. Right. But he didn't check his
22 rectum.

23 Q. Okay. So I'll ask you again, did
24 you believe that the pat frisk of Inmate Greene that you
25 saw was sexual in any way?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. No.

3 Q. No, okay. But you're saying that he
4 -- so describe to me what you're talking about then?

5 A. He checked his groin and he checked
6 his buttocks.

7 Q. Okay. And is that just an
8 appropriate search?

9 A. I would say he -- it was a needless
10 search because he didn't bring -- when he went to the
11 magnetometer, there was no alarm or signal.

12 Q. Okay. So we've talked about it
13 before, you believe that it's needless if the
14 magnetometer doesn't go off, correct?

15 A. Correct.

16 Q. Okay. Other than that, was the pat
17 frisk conducted in an appropriate way?

18 A. You could say yes.

19 Q. Okay. So a regular pat frisk does
20 involve checking the groin and buttocks area?

21 A. Right.

22 Q. Okay. And that's what you saw
23 happen with Inmate Greene that day?

24 A. Correct.

25 Q. Okay. Okay. So what happened once

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 that pat frisk was completed?

3 A. I went -- I went to rec.

4 Q. Okay. But did Inmate Greene go to
5 rec?

6 A. No.

7 Q. Okay. Do you know where he went?

8 A. He -- he was escorted back to his
9 cell.

10 Q. Okay. Do you know why?

11 A. He -- they said he had layers of
12 clothing.

13 Q. Okay. So he -- they said that he
14 was wearing something he couldn't go to rec in?

15 A. Correct.

16 Q. Okay. Do you know if that was true
17 or not?

18 A. No.

19 Q. You don't know?

20 A. I don't know.

21 Q. Okay. Okay. Now, are you claiming
22 that Officer Schieber retaliated against you in any
23 other way?

24 A. Yes, I wrote the Inspector General
25 about Inmate Greene.

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2 Q. Okay. What did you write to the
3 Inspector General for?

4 A. Because Schieber beat Inmate Greene
5 up.

6 Q. Okay. When did that happen?

7 A. That same night.

8 Q. Okay. So you're talking about once
9 Inmate Greene went back to his cell?

10 A. Right.

11 Q. Okay. And when you went to rec?

12 A. Right.

13 Q. Okay. So you wrote to the Office of
14 Special Investigations about that?

15 A. Correct.

16 Q. Okay.

17 A. And the windows.

18 Q. Do you remember when you wrote that?
19 When you wrote to them?

20 A. I don't recall.

21 Q. Okay. Now, you were not present
22 when you said that Inmate Greene was beaten up, correct?

23 A. Right.

24 Q. Okay. So how do you know about
25 that?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Because he was put in the box.

3 Q. Okay. And by box you mean the
4 solitary housing unit?

5 A. Yes.

6 Q. The SHU?

7 A. Correct.

8 Q. Okay. So was he moved to another
9 location?

10 A. Right.

11 Q. Okay. When was that?

12 A. That night.

13 Q. Okay. Was he gone before you got
14 back from rec?

15 A. Correct.

16 Q. So how did you find out that he was
17 in the SHU?

18 A. I believe instinct. That's the only
19 place we can go.

20 Q. Okay. So you just assumed that he
21 was taken to SHU?

22 A. Right.

23 Q. Okay. And how did you know that
24 force had been used?

25 A. Because C.O. Schieber is known in

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 the facility for beating people up.

3 Q. Okay. So you assumed that C.O.
4 Schieber had beaten up Inmate Greene?

5 A. Correct.

6 Q. Okay. And then based on that, you
7 wrote to the O.S.I.?

8 A. Yes, and the windows too.

9 Q. Okay. You had mentioned the windows
10 in your complaint, you're saying?

11 A. Right.

12 Q. Okay. Do you know if Inmate Greene
13 wrote to O.S.I.?

14 A. No. Well, actually he didn't.

15 Q. You know that he did not?

16 A. Right.

17 Q. Okay. How do you know that?

18 A. Because I spoke to the Inspector
19 General, Lovelace.

20 Q. Okay. And how do you know that
21 Inmate Greene did not write to them?

22 A. Because Lovelace told me he didn't
23 get a report from Greene and he was going to go check on
24 him after he finished the interview with me.

25 Q. Okay. Okay. So now, based on you

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 reporting that to O.S.I., that's why you think that
3 Officer Schieber retaliated against you?

4 A. Correct.

5 Q. Okay. So what was it that Officer
6 Schieber did to retaliate against you?

7 A. He came by my cell, blowing kisses
8 at me, called me cinnamon and called me a faggot.

9 Q. Okay. How many times did that
10 occur?

11 A. Several times.

12 Q. Okay. Can you estimate at all?

13 A. Three.

14 Q. Okay. Do you remember when that
15 was?

16 A. I don't recall.

17 Q. Okay. In your complaint you
18 described January 31st, 2014. Does that sound right?

19 A. Correct.

20 Q. Okay. And then on February 3rd,
21 2014, does that sound right?

22 A. Correct.

23 Q. Okay. Anything else that you
24 remember him doing besides saying those things, blowing
25 kisses and calling you cinnamon?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. And he also threw water on me.

3 Q. Okay. That was the February 3rd,
4 2014?

5 A. Yeah. I don't recall.

6 Q. Okay. Does that -- does that sound
7 right though --

8 A. Yes.

9 Q. --- about that time? Okay. Okay.
10 Anything else that you remember Officer Schieber doing?

11 A. Yeah, he was threatening to beat me
12 up.

13 Q. Okay. When was that?

14 A. He would tell me to come out of my
15 cell so he could beat me up.

16 Q. Okay. And was that the same day
17 that he was calling you cinnamon?

18 A. Correct.

19 Q. Okay. So it's that same time period
20 of January to early February 2014?

21 A. Yes.

22 Q. Okay. What else that he did?

23 A. That's it.

24 Q. Okay. Okay. Then you said that you
25 met with this O.S.I. Investigator Lovelace?

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. Yes.

3 Q. Do you know if Officer Schieber knew
4 about the O.S.I. investigation?

5 A. Yes.

6 Q. Okay. How do you know that he knew?

7 A. Because they always know.

8 Q. Okay. But it wasn't based on
9 anything that he said?

10 A. Right.

11 Q. Okay. Okay. When you met with
12 Investigator Lovelace, did you give a statement?

13 A. I believe so.

14 Q. Okay. And do you know anything
15 about Investigator Lovelace's discussions with Inmate
16 Greene?

17 A. No.

18 Q. Okay. When you met with
19 Investigator Lovelace, was that the first time that you
20 met with an O.S.I. Investigator?

21 A. No, I met with Investigator Gessner.

22 Q. Okay. So you had already met an
23 investigator before, or do you remember when?

24 A. Yeah, I don't recall.

25 Q. Okay.

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn

2 A. I met with an investigator about
3 C.O. Perry and he said he would come back and see me.
4 He never came back to see me.

5 Q. Okay. So do you -- you said that
6 you've met with Investigator Gessner as well?

7 A. Correct.

8 Q. Okay. Do you remember what you
9 talked to Investigator Gessner about?

10 A. C.O. Perry and the retaliation I was
11 experiencing for the sexual assaults.

12 Q. Okay. Was that a different O.S.I.
13 investigation from when you spoke with Investigator
14 Lovelace?

15 A. Correct.

16 Q. Okay. Okay. I just want to get a
17 couple of exhibits set up. Can we go off the record?

18 (Off the record 11:34 a.m. to 11:36 a.m.)

19 THE REPORTER: All right. We're back on
20 the record.

21 BY MS. MCKAY: (Cont'g.)

22 Q. Okay. Mr. Gunn, you have in front
23 of you what's been marked as Exhibit Twenty-four,
24 correct?

25 A. Okay.

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2 Q. Do you see that exhibit?

3 A. Yes.

4 Q. Okay. And is that the report of
5 your interview with Investigator Lovelace?

6 A. Yeah.

7 Q. Okay. Is that in your handwriting?

8 A. No.

9 Q. Okay. Is that the investigator's
10 handwriting?

11 A. Yes.

12 Q. Okay. Did you review this document?

13 A. Yes.

14 Q. Okay. And then your signature
15 appears on page two?

16 A. Correct.

17 Q. Okay. So the contents are true and
18 accurate?

19 A. Right.

20 Q. Okay. And you met with Investigator
21 Lovelace on February 4th, 2014?

22 A. Correct.

23 Q. Okay. Did you hear from
24 Investigator Lovelace before that date?

25 A. No.

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2 Q. Okay. Did you hear from

3 Investigator Lovelace after that date?

4 A. No.

5 Q. Okay. Do you know what the result
6 of the investigation was?

7 A. Yes, they found out that there was
8 no merit.

9 Q. Okay. So it was unsubstantiated?

10 A. Correct.

11 Q. Okay. But you didn't hear from
12 officer or Investigator Lovelace after that?

13 A. Right.

14 Q. Okay. Now, could you take a look at
15 what's been marked as Exhibit Thirteen?

16 Now, is that the supporting deposition
17 from your interview with Investigator Gessner?

18 A. Correct.

19 Q. Okay. And your signature -- did you
20 sign that document?

21 A. Yes.

22 Q. Is this one in your handwriting?

23 A. No.

24 Q. Okay. So is this the investigator's
25 handwriting?

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2 A. Yes.

3 Q. When the investigator's write it, do
4 they write it in front of you?

5 A. Yes.

6 Q. Okay. And did you review this
7 document before you signed it?

8 A. Yes. I was under the impression
9 that he would come back in two weeks and do this
10 interview, but he -- he became untruthful.

11 Q. Well, so Mr. -- Investigator Gessner
12 did not return. Is that correct?

13 A. Correct.

14 Q. After this interview, okay. And
15 this interview was on March 24th, 2014?

16 A. Right, because he said he was
17 unprepared that I have so many grievances and he said he
18 didn't have time to finish reviewing the grievances and
19 the complaints, and he wanted to come back, and he never
20 did.

21 Q. Okay. Okay. But the contents of
22 this -- this document are true and accurate?

23 A. No.

24 Q. Well, I'm just -- how are they not?

25 A. Because at the end it says that

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 Schieber had recently changed his ways and I don't
3 believe he has.

4 Q. Okay. So at the -- you're talking
5 about the last two lines there --

6 A. Yes.

7 Q. -- the rest -- okay. And so just
8 with respect to the rest of that document, is that true
9 and accurate?

10 A. Yes.

11 Q. Okay. Because you signed it, right?

12 A. Right.

13 Q. Okay. And so after the interview or
14 du -- was it during the interview that the investigator
15 wrote these -- wrote this out?

16 A. Yeah.

17 Q. Okay. And it was based on what you
18 said -- told them, correct?

19 A. Yes.

20 Q. And then down in the bottom two
21 lines you're talking about, it says C.O. Schieber has
22 recently changed his ways, but I still don't trust any
23 C.O.s to leave my cell. Is that what that says?

24 A. Right.

25 Q. Okay. And you said that, correct?

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2 A. Right.

3 Q. Okay. But now, you don't believe
4 that's true?

5 A. Correct.

6 Q. Okay. But at the time when you
7 signed it, did you believe that that was true?

8 A. Yes.

9 Q. Okay. Okay. And then you said --
10 did you -- do you know the result of this investigation?

11 A. Yeah, they said that it was onset --
12 unsubstantiated.

13 Q. Okay. So that one was
14 unsubstantiated as well?

15 A. Yes.

16 Q. Okay. And you didn't see of --
17 Investigator Gessner again?

18 A. Correct.

19 Q. Okay. The -- when you talk about
20 those sexual advances by C.O. Schieber in January and in
21 February of 2014, do you have any physical injuries from
22 -- from those events?

23 A. No, just mental.

24 Q. Okay. So is it the same mental
25 injuries we've talked about the depression and

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 nightmares?

3 A. Correct.

4 Q. Okay. And did you continue to see
5 O.M.H. staff --

6 A. Yes.

7 Q. Okay. Did you talk to O.M.H. staff
8 about the sexual advances?

9 A. Yes.

10 Q. Okay. Do you know why C.O. Schieber
11 made those advances at you?

12 A. I believe he has a homosexual
13 behavior.

14 Q. Okay. So you believe he did it for
15 sexual gratification?

16 A. Yes.

17 Q. Do you know anything about Officer
18 Schieber's personal life?

19 A. He's very aggressive and he likes to
20 beat people up.

21 Q. Okay. Do you know anything about
22 whether -- you said that you believe that he has
23 homosexual idiosyncrasies, is that -- that's based on
24 how the pat frisks and the sexual advances?

25 A. Right.

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2 Q. Okay. Do you have any other basis
3 for that belief?

4 A. No.

5 Q. Okay. When you wrote to O.S.I.
6 regarding Inmate Greene, did you tell anyone you had
7 done that?

8 A. No.

9 Q. Okay. Do you know if anyone knew
10 that you had done that?

11 A. No.

12 Q. Now the last date that you mentioned
13 in -- let me -- so Count Eleven of your complaint talks
14 about the sexual advances by Officer Schieber, right?
15 If you don't recall, that's okay.

16 A. Count Eleven?

17 Q. Right. Do you remember if that one
18 pertains to Officer Schieber?

19 A. Yeah, I believe so.

20 Q. Okay. Okay. And that one pertains
21 to the same. The incidents that we were talking about
22 regarding the sexual advances -- what he would say to
23 you, is that right?

24 A. Correct.

25 Q. Okay. Okay. So that -- those

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2 advances took place through to -- what is it, do you
3 remember when they stopped?

4 A. No, I don't recall.

5 Q. Okay. Did you file any grievances
6 regarding the -- the contact you had with Officer
7 Schieber?

8 A. Absolutely.

9 Q. Okay. So if you could take a look
10 at what's been marked as Exhibit Fifteen. Now, do you
11 recognize Exhibit Fifteen as one of the grievance
12 packets?

13 A. Yes.

14 Q. Okay. Do you see your grievance in
15 there?

16 A. Yes.

17 Q. Okay. Is that -- where is that?
18 There's page numbers down at the bottom right hand
19 corner.

20 A. Five, six, seven.

21 Q. Okay. And are the -- that -- is
22 that grievance in your handwriting?

23 A. Yes.

24 Q. And are the contents true and
25 accurate?

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2 A. Correct.

3 Q. And you signed that document?

4 A. Yes.

5 Q. Okay. And just for the record, this
6 is grievance number EL 42163-14, correct?

7 A. Yes.

8 Q. Okay. And your grievance was
9 denied?

10 A. No.

11 Q. Well, did you appeal to C.O.R.C.?

12 A. Yes.

13 Q. Okay. So why do you say that it was
14 not denied?

15 A. Because there was a second part from
16 C.O.R.C.

17 Q. Okay. Once it got to the appeal
18 level you're saying?

19 A. Yes.

20 Q. Okay. And do you know what result
21 there was?

22 A. Well, they say they unanimously
23 accepted it in part, but they give the reasons for the
24 superintendent.

25 Q. All right. Do you know why it was

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2 accepted in part?

3 A. No.

4 Q. Okay. You're -- you're looking at
5 the first page of Exhibit Fifteen?

6 A. Correct.

7 Q. Okay. And C.O.R.C. indicated that
8 they were accepting only to the extent that C.O.R.C.
9 upholds the determination of the superintendent. Is
10 that correct?

11 A. Yeah.

12 Q. Okay. Okay. And the superintendent
13 had denied your grievance, correct?

14 A. Yes.

15 Q. Okay. Now I'd like to have you take
16 a look at what's been marked as Exhibit Sixteen. Now,
17 is that your other grievance regarding C.O. Scheiber?

18 A. This is the grievance on
19 Superintendent Paul Chappie Jr.

20 Q. Right. But it also relates to the
21 sexual -- what you say is the sexual abuse by C.O.
22 Schieber, correct?

23 A. Yes.

24 Q. Okay. And specifically your -- this
25 is your entire grievance packet, correct?

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2 A. Yes.

3 Q. From grievance number EL 42205-14?

4 A. Correct.

5 Q. Okay. And your grievance appears on
6 page, is it five to six or just page five?

7 A. Page five.

8 Q. Okay. Is that document in your
9 handwriting on page five?

10 A. Yes.

11 Q. Okay. And you signed that document?

12 A. Yes.

13 Q. And the contents are true and
14 accurate?

15 A. Correct.

16 Q. Okay. All right. And that
17 grievance was denied, correct?

18 A. Yes.

19 Q. Okay. Those are your two grievances
20 regarding C.O. Schieber, correct?

21 A. Well, I -- I tried to write a
22 grievance against the superintendent, but they're
23 biased, and they won't allow you to write grievances
24 against the superintendent for some reason. And
25 C.O.R.C., again, unanimously accepted it in part.

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2 But again, determination on the
3 superintendent for the reasons stated below. But I
4 don't -- I don't get it.

5 Q. Okay. You're talking about what's
6 on page one of Exhibit Sixteen?

7 A. Yes.

8 Q. Okay. And you're saying that you --
9 you wanted this grievance to be against the
10 superintendent, right?

11 A. Right.

12 Q. You wanted to hold him responsible
13 for C.O. Schieber?

14 A. Yes.

15 Q. Okay. Okay. And you filed just the
16 one that we looked at in Exhibit Fifteen against C.O.
17 Schieber?

18 A. What?

19 Q. And you filed just the one that we
20 already looked at Exhibit Fifteen against C.O. Schieber,
21 correct?

22 A. Right.

23 Q. Okay. And then this is the only
24 other one that you did. And this one was supposed to be
25 against the superintendent, correct?

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2 A. Yes.

3 Q. Sorry, Exhibit Sixteen?

4 A. Right.

5 Q. Okay. Okay. Did you have any --

6 strike that, sorry. I'd like to have you take a look at

7 Exhibit Eighteen. Is that your list of appeals to

8 C.O.R.C.?

9 A. Yes.

10 Q. Okay. And the first page of Exhibit

11 Eighteen shows your active cases, correct?

12 A. Yes.

13 Q. As of the date it was printed?

14 A. Correct.

15 Q. Okay. And then the second two pages

16 are your closed cases, correct?

17 A. Yes.

18 Q. Okay. So does that appear to be a

19 true and accurate list of your grievances?

20 A. Yes.

21 Q. Okay. Please take a look at what's

22 been marked as Exhibit Nineteen. Is that your inmate

23 disciplinary history?

24 A. Yes.

25 Q. Okay. And you see your inmate I.D.

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2 and name at the top there?

3 A. Right.

4 Q. Okay. Is that true -- does that
5 truly and accurately show which disciplinary convictions
6 you've had?

7 A. Yes.

8 Q. Okay. And if you take a look at the
9 last page there of Exhibit Nineteen, is that your
10 chronological history display?

11 A. Right.

12 Q. Okay. So that shows what locations
13 you were housed in during your incarceration since 2003?

14 A. Correct.

15 Q. Okay. Okay. Now you would agree
16 that your physical injuries regarding all of your claims
17 are relatively modest, correct?

18 A. Yes.

19 Q. Some of the incidents you didn't
20 have any physical injury at all, correct?

21 A. I wouldn't say at all. I will say
22 that they are modest.

23 Q. I'm just asking about physical for
24 some of the incidents, right. We talked about some, you
25 said you had no physical injury, correct?

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2 A. Correct.

3 Q. Okay. And you've struggled for most
4 of your life with depression, correct?

5 A. I was never diagnosed with
6 depression.

7 Q. Well I'm just asking you, would you
8 agree that you've struggled for most of your life with
9 depression?

10 A. No.

11 Q. Okay. And when were you first
12 diagnosed? Do you remember?

13 A. No, I don't recall. Actually, in
14 2000 -- 2002, I believe.

15 Q. Okay. Were you in custody at the
16 time?

17 A. Yes.

18 Q. Was it shortly after this
19 incarceration began, your current bid?

20 A. Correct.

21 Q. Okay. I'd like to have you take a
22 look at Exhibit Seventeen. You know what, actually, can
23 you hand that back to Ms. Allen, I just want to make
24 sure that we only get what we need. Okay. Can we go
25 off just for a second? I just want to make sure we get

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2 the exhibit.

3 (Off the record, 11:59 a.m. to 12:00
4 p.m.)

5 THE REPORTER: We're back on the record.

6 BY MS. MCKAY: (Cont'g.)

7 Q. Okay. So Mr. Gunn, you have what's
8 been marked as Exhibit Seventeen in front of you,
9 correct?

10 A. Yes.

11 Q. Okay. And that document is in your
12 handwriting?

13 A. Yes.

14 Q. Okay. And is it signed by you on
15 page two?

16 A. Yes.

17 Q. Do you remember what day you wrote
18 it?

19 A. September 20th.

20 Q. Okay. And if you look at page one,
21 that's got -- Mr. Gunn, can you look at page one that
22 has the caption from this case, correct?

23 A. Yes.

24 Q. Okay. So this is the document you
25 filed with the court in this case, right?

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2 A. Right.

3 Q. Okay. And are the contents true and
4 accurate?

5 A. Yes.

6 Q. Okay. You were moving to strike
7 your -- the answer, correct?

8 A. Excuse me?

9 Q. You were moving to strike an answer,
10 correct?

11 A. Moving to strike an answer.

12 Q. Right. That's what that was, right,
13 it says at the top motion to strike answer?

14 A. Oh, yes.

15 Q. Okay. Okay, that's all that I
16 needed with that one. Okay. I think we had skipped
17 over Exhibit Fourteen. So if you would please take a
18 look at that. Okay. Do you have that exhibit, Mr.
19 Gunn?

20 A. Yes.

21 Q. Okay. So Exhibit Fourteen is a
22 typed document, correct?

23 A. Yes.

24 Q. Okay. And did you type that
25 document?

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2 A. Yes.

3 Q. Okay. And did you sign it?

4 A. Yes.

5 Q. And the contents are true and

6 accurate?

7 A. Correct.

8 Q. And is the last page the envelope

9 you sent to them?

10 A. Yes.

11 Q. Okay. Is Exhibit Fourteen the

12 letter that you sent to the O.S.I.?

13 A. Yes.

14 Q. Okay. Now it's in regards to the

15 Inmate Greene incident?

16 A. Right.

17 Q. Okay. And are the contents true and

18 accurate?

19 A. Correct.

20 Q. And when you sent this letter you

21 didn't tell anyone you sent it, correct?

22 A. Right.

23 Q. Okay. We're all set with that one.

24 Mr. Gunn, actually, regarding -- did you write that

25 letter in Exhibit Fourteen on January 24th, 2014?

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2 A. Yes.

3 Q. Okay. We're all set with that. Do
4 you know -- do you know if Inmate Greene was interviewed
5 by O.S.I.?

6 A. Yes.

7 Q. You know he was?

8 A. Yes.

9 Q. Okay. Taking a look at what's been
10 marked as Exhibit Twenty-three. Is that the report of
11 interview of Inmate Greene by Investigator Lovelace?

12 A. Correct.

13 Q. And that report of interview is four
14 pages, correct?

15 A. Right, right.

16 Q. And then Mr. Greene has signed on
17 page four of four?

18 A. Right.

19 Q. Okay. And turning to the next page,
20 is that a grievance by Mr. Greene?

21 A. Yes.

22 Q. Okay. And were you -- are you --
23 were you familiar with Inmate Greene's writing?

24 A. No.

25 Q. Okay. Okay. Next, I'd like to have

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 you take a look at Exhibit Twenty. And if you flip
3 through that exhibit, is that your medical records?

4 A. Yes.

5 Q. Okay. Do you see your DIN and name
6 on those records?

7 A. Yes.

8 Q. Okay. Now you have a history of
9 GERD -- GERD, right, G-E-R-D?

10 A. That's the first I've ever heard of
11 that.

12 Q. Okay. You've not -- you're not
13 familiar with that condition?

14 A. No.

15 Q. Okay.

16 A. What is that?

17 Q. Well, I'm just asking you if you're
18 -- is it -- do you experience like irritable bowel or
19 something?

20 A. Yes.

21 Q. Okay. Do you remember when you
22 first started experiencing irritable bowel?

23 A. During the sexual assaults.

24 Q. Okay. Are you aware of any
25 connection between your irritable bowel syndrome and

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 hemorrhoids?

3 A. No.

4 Q. Okay. No medical staff has ever
5 talked to you about that?

6 A. No.

7 Q. Are you aware that you were
8 diagnosed with G.E.R.D.?

9 A. No.

10 Q. Okay. But you're -- you would agree
11 that you have irritable bowel syndrome?

12 A. Yes.

13 Q. Okay. Okay. Do you see where
14 there's page numbers at the bottom, right-hand corner of
15 Exhibit Twenty? There -- there are small page numbers,
16 do you see those?

17 A. Yes.

18 Q. Okay. I'd like to have you take a
19 look at page four of Exhibit Twenty. Okay. Is that the
20 entry pertaining to the March 29th, 2013, pat frisk by
21 C.O. Perry?

22 A. Yes.

23 Q. Okay. And that entry indicates that
24 you were complaining of being sexually assaulted on
25 Friday night during pat frisk, claims officer pulled

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2 underwear up into genital area and violently squeezed
3 his genital area. Complains of genital area and rectum
4 soreness. Is that correct?

5 A. Yes.

6 Q. Okay. So that's what you reported
7 to medical staff?

8 A. Yes.

9 Q. Okay. And you saw medical staff on
10 March 31st, 2013?

11 A. Correct.

12 Q. Okay. And then in the next box
13 after that it says denies having any skin to skin
14 contact, right?

15 A. Right.

16 Q. Okay. And that's true and correct?

17 A. Correct.

18 Q. Okay. Then it indicates was not
19 fondled at any time during the encounter. Is that true
20 and accurate?

21 A. That's not true.

22 Q. Okay. So you -- you didn't say that
23 to the medical staff?

24 A. No.

25 Q. Okay. Then next to plan, it says

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2 genital and rectal area examined no redness, swelling,

3 abrasions or open areas noted. Is that accurate?

4 A. Correct.

5 Q. From your examination?

6 A. Correct.

7 Q. Okay. Scrotal sac soft, no lumps or

8 bumps noted, rectal area clean and no open areas or

9 redness noted. Is that correct?

10 A. Correct.

11 Q. Okay. And then the nurse notified

12 the doctor, correct?

13 A. Yes.

14 Q. Okay. Did you have any other

15 examinations?

16 A. No.

17 Q. Okay. And you were -- down at the

18 bottom it says plan may apply ice to area and may take

19 Tylenol.

20 A. Correct.

21 Q. Is that the treat -- is that the

22 treatment you received?

23 A. Yes.

24 Q. Okay. Okay. Turning to page five

25 the next time --.

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2 A. And they -- and they also --.

3 Q. Go ahead, Mr. Gunn.

4 Q. They also referred me to M.H.U.

5 Q. Okay. Yeah. So on page four also
6 indicates that they sent -- they did an M.H.U. referral,
7 correct?

8 A. Right.

9 Q. Okay. Now you next requested
10 medical care on April 4th, 2013?

11 A. Right.

12 Q. Okay. And at that one you claim sex
13 -- you were sexually assaulted on 3/29/13, officer
14 pulled his underwear up and penetrated rectum with his
15 finger. Is that what you reported to medical staff that
16 day?

17 A. Yes.

18 Q. Okay. And did -- an exam was done,
19 right?

20 A. Correct.

21 Q. Okay. And the nurse noted that your
22 rectum had no tearing or bleeding, correct?

23 A. Correct.

24 Q. And then the small hemorrhoid noted,
25 right?

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2 A. Yes.

3 Q. They also examined the rest of that,
4 the area, right, your genitals?

5 A. Yes.

6 Q. Okay. And there weren't any other
7 issues with your genitals, correct?

8 A. Correct.

9 Q. And then they gave you hemorrhoid
10 cream, right?

11 A. Yes.

12 Q. Okay. So that entry is true and
13 accurate?

14 A. Yes.

15 Q. Okay. Now the next morning you went
16 to a.m. sick call right for five thirteen?

17 A. Four, yeah, five thirteen, yeah,
18 right.

19 Q. Okay. And you complained of genital
20 aches, stated an incident with officers. Was that the
21 same incident or a different one?

22 A. Same officers.

23 Q. Well, I'm not -- I'm just wondering
24 is it the same -- was it from the pat frisk or something
25 else?

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2 A. The pat frisk.

3 Q. Okay. Okay. Then turning to page
4 six of Exhibit Twenty. You next went to medical on
5 April 8th, 2013?

6 A. Correct.

7 Q. Okay. And you complained of back,
8 neck pain, you wanted Robaxin renewed because of
9 increased shoulder, neck and back pain, correct?

10 A. Yes.

11 Q. Okay. And it says states pulled out
12 back yesterday, correct?

13 A. Yes.

14 Q. Okay. So you had injured your back
15 the day before, it was April 7th, 2013? Is that
16 correct?

17 A. April?

18 Q. Well, here let me ask it this way
19 Mr. Gunn, it's indicates you stated pulled back out
20 yesterday. Is that what you told medical staff?

21 A. I don't recall.

22 Q. Okay. Do you have any reason to
23 disbelieve that you said that?

24 A. No.

25 Q. Okay. And then after that the next

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2 time you attended sick call was on May 17th, 2013?

3 A. Correct.

4 Q. And it was for follow up for your
5 back pain?

6 A. Yes.

7 Q. And they restarted your Robaxin?

8 A. Okay. Yes.

9 Q. Okay. And you next went to sick
10 call on June 13th, 2013, correct?

11 A. Yes.

12 Q. Okay. And you stated that you were
13 sexually assaulted by a security officer, states that
14 during pat frisk officer squeezed his testicles and
15 buttocks. Is that correct?

16 A. Yes.

17 Q. Okay. And there was an exam done,
18 correct?

19 A. Yes.

20 Q. And they found no swelling noted on
21 the exam, no tenderness noted, continue to monitor. Is
22 that accurate from the -- that examination?

23 A. Yes.

24 Q. Okay. And you were given over-the-
25 counter Motrin?

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2 A. Yes.

3 Q. Okay. And after that you next went
4 to sick call on June 20th, 2013?

5 A. Correct.

6 Q. Okay. And you complained of scrotal
7 pain, is that correct?

8 A. Yes.

9 Q. And you asked that your complaint be
10 placed in your chart, right?

11 A. Yes.

12 Q. Okay. And then did you -- you next
13 sought out medical care on August 2nd, 2013?

14 A. Yes.

15 Q. Okay. And you went to sick call
16 stating continues to experience harassing pat frisk,
17 stated several days ago a C.O. probed his rectum during
18 a pat frisk, right?

19 A. Correct.

20 Q. Okay. And then on August 28th,
21 2013, you again reported to medical, scrotal pain,
22 correct?

23 A. Yes.

24 Q. Okay. And that was only when you
25 were pat frisked, no pain when you were at the medical

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2 care provider, right?

3 A. No.

4 Q. Okay. So if we look at that entry
5 on 8/20/13 it's page seven on Exhibit Twenty. It
6 indicates scrotal pain only when he is pat frisked, no
7 pain now. Is that true and accurate?

8 A. No.

9 Q. Okay. Do you have -- so why is that
10 not true and accurate?

11 A. Because I never said that.

12 Q. Okay. So you never said that you
13 were not in pain when you saw them, but that you had
14 been during the pat frisk?

15 A. I told them that I was in pain and
16 that I'm not only in pain when I'm having pat frisk done
17 with me.

18 Q. Okay. So you didn't say that it
19 just was painful when the pat frisk was going on?

20 A. Correct.

21 Q. Okay. Further down that section it
22 says patient. Do you see where it says assessment
23 there? I'm still on page seven of twenty, Exhibit
24 Twenty. And then it says the word ago. Do you see
25 that?

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2 A. No.

3 Q. Okay. Do you see --?

4 A. Okay. Okay.

5 Q. Yeah. The last -- the last sentence

6 --?

7 A. This should be the last time, a
8 month ago.

9 Q. Okay. So it says -- do you see
10 where it says patient admits to this writer that needs
11 help with self esteem?

12 A. Yes.

13 Q. Okay. Do you remember that
14 conversation?

15 A. I don't recall.

16 Q. Okay. It was in August of 2013,
17 right?

18 A. Right.

19 Q. Okay. So do you have a memory as to
20 what you said to that medical care provider that day?

21 A. No.

22 Q. Okay. Okay. Then the next time you
23 got medical -- needed medical care was on October 21st,
24 2013, right?

25 A. Yes.

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2 Q. You're still at Elmira, right?

3 A. Yes.

4 Q. Okay. And you were complaining of
5 back and neck injury and sore throat, right?

6 A. Right.

7 Q. And on November 13th, 2013, you were
8 complaining of neck pain, you said you slept on it
9 wrong?

10 A. Correct.

11 Q. Okay. And you'd been given Voltaren
12 before that, right?

13 A. Right.

14 Q. Okay. And then in December of 2013,
15 you asked to see a doctor concerning your increased
16 back, neck and shoulder pain?

17 A. Correct.

18 Q. Okay.

19 A. Because an x-ray was done on
20 November 12, '13 and I think something in my cervical
21 neck -- there's something wrong with my neck.

22 Q. Okay.

23 A. And they are not addressing that.

24 Q. Okay. So you had an x-ray of your
25 neck in -- it was in November of 2013?

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2 A. Correct.

3 Q. Okay. And then looking it up page -
4 - the entry for January 3rd, 2014, on page nine of
5 Exhibit Twenty. You had P.T. right, physical therapy?

6 A. Right.

7 Q. And a TENS unit?

8 A. Correct.

9 Q. Is that correct? Okay. And you
10 were also complaining about dry skin and itches?

11 A. Correct.

12 Q. And you were given lotion for that,
13 right?

14 A. Yes.

15 Q. And then they ordered an M.R.I. for
16 your shoulder?

17 A. Where do you see that?

18 Q. Well, I'm asking you if you had --
19 I'm looking at the entry for January 3rd, 2014,
20 providers orders, it says M.R.I. for your left shoulder.

21 A. Okay.

22 Q. Did you -- did you have the M.R.I.
23 of your left shoulder?

24 A. Yes.

25 Q. Okay. Okay. And then you saw

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2 medical staff next on January 24th, 2014. And you were
3 still complaining of the back, neck and shoulder pain,
4 right?

5 A. Yes.

6 Q. And you indicated it was from a
7 four-year-old injury?

8 A. Yes.

9 Q. They offered you ibuprofen, but you
10 said it bothers your stomach, right?

11 Q. Correct.

12 Q. Okay. Then you next saw medical on
13 January -- January 28th, 2014, correct?

14 A. Right.

15 Q. Okay. And you claim the sexual
16 assault on 1/24/14?

17 A. Correct.

18 Q. Okay. And you claim that during pat
19 frisk had groin and buttocks rubbed and groped, is that
20 correct?

21 A. Yes.

22 Q. Okay. And it was no skin to skin
23 contact occurred, correct?

24 A. Right.

25 Q. Okay. And you next ask for medical

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2 care on February 5th. Go ahead, you wanted to say
3 something?

4 A. Yes. M.H.U. referral was submitted.

5 Q. Okay. So on January 28th, 2014,
6 they referred you for a M.H.U., correct?

7 A. Right. No examination was done.

8 Q. Okay. So no physical examination
9 was done, correct?

10 A. No.

11 Q. Is that correct?

12 A. Correct.

13 Q. Okay. And they -- but they referred
14 you to O.M.H. staff?

15 A. Correct.

16 Q. Okay. And then the next time that
17 you requested medical care was February 18th, 2014?

18 A. But there's something else
19 interesting about this, they returned me to block and
20 secured me.

21 Q. Okay. Hang on, just for purposes of
22 the record. So you're looking at page sixteen, excuse
23 me, page ten of Exhibit Twenty, right? Mr. Gunn, is
24 that correct, you're looking at that page --?

25 A. Yes.

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2 Q. Okay. Okay. So what else did you
3 want to say about that entry?

4 A. They returned me to the block and
5 secured me.

6 Q. Okay. You're saying they returned
7 you to your cell after sick call?

8 A. Yes.

9 Q. Okay. Okay. So now, Mr. Gunn.

10 A. Yes.

11 Q. Turning to page eleven of Exhibit
12 Twenty. The next time that you requested medical care
13 was February 18th, 2014. Is that correct?

14 A. Yes.

15 Q. Okay. And you had received the
16 M.R.I., correct?

17 A. Yes.

18 Q. Okay. There was an M.R.I. of your
19 neck, back and shoulder?

20 A. Yes.

21 Q. Okay. Okay. Now you -- did you
22 receive the results then of that M.R.I.?

23 A. Yes, I did.

24 Q. Okay. And it says verbalized
25 understanding?

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2 A. It says follow up with ortho --
3 orthopedic or something. They -- they basically
4 diagnosed me with arthritis.

5 Q. Okay. And they referred you to an
6 orthopedist?

7 A. I believe so.

8 Q. Okay. And it says will continue to
9 monitor, no other needs or complaints. Is that
10 accurate?

11 A. No.

12 Q. Okay. What do you mean by that?

13 A. There's complaints, I -- I have
14 complaints.

15 Q. I'm just -- did you verbalize other
16 things to then -- to the medical staff?

17 A. No.

18 Q. Okay. And then on March 10th, 2014,
19 that was the next time that you requested medical care,
20 correct?

21 A. Yes.

22 Q. Okay. And you -- you -- that part
23 is -- it says that you advised that you were scheduled
24 in the ortho clinic in the near future. Is that
25 relating to the neck, back and shoulder?

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2 A. Where are you at?

3 Q. It would be the entry from March
4 10th, 2014. Do you see that? That middle entry on page
5 eleven.

6 A. Yeah.

7 Q. Okay. And they were referring, they
8 said that you were being referred to an ortho clinic,
9 right?

10 A. Yes.

11 Q. Okay.

12 A. But it also -- this also says I have
13 not been relieved of pain and I have blood in my stool.

14 Q. Okay. Okay. Do you know why you
15 had blood in your stool?

16 A. No.

17 Q. Okay. And then you next received
18 medical care on March 21st, 2014?

19 A. Right.

20 Q. Okay. That was concerning your left
21 shoulder as well, right?

22 A. Correct.

23 Q. Okay. Okay. That's all we need to
24 do for Exhibit Twenty. Now you've seen -- you've been
25 seen by O.M.H. staff, correct, for mental health care?

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2 A. Yes.

3 Q. Okay. Are you familiar with a
4 social worker, Catherine Russell?

5 A. Yes.

6 Q. Okay. Do you remember where you saw
7 her?

8 A. Green Haven.

9 Q. Okay. Was she a regular social
10 worker that you saw, or do you see multiples, how does
11 that work?

12 A. They only had two social workers and
13 she was one of them.

14 Q. Okay. Were all of your visits with
15 her?

16 A. Not all of them.

17 Q. Okay. Do you remember how many
18 visits you had with her?

19 A. A few, several.

20 Q. Okay.

21 A. They were --.

22 Q. And at -- at Green Haven -- did you
23 go to Green Haven after you were in Elmira?

24 A. Correct.

25 Q. Okay. And there you started to have

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2 some relief with the mental health treatment, correct?

3 A. Not exactly.

4 Q. Okay. What do you mean by not
5 exactly?

6 A. After Ms. -- after I'd seen Ms.
7 Russell, she was no help to my therapy.

8 Q. Okay. What do you mean by that?

9 A. She is -- she was a part of the
10 problem.

11 Q. Okay. Can you --?

12 A. With the prison guards.

13 Q. Can you describe Ms. Russell's
14 physical description?

15 A. She's bowlegged.

16 Q. Okay.

17 A. White female, maybe fifty years old.

18 Q. About fifty you said?

19 A. Yes.

20 Q. Okay.

21 A. Very biased.

22 Q. Okay. Just about her physical
23 appearance, can you estimate her weight, is she
24 overweight, underweight?

25 A. She's not overweight. She's about a

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2 size seven or six.

3 Q. Okay. You said that there was one
4 other social worker at Green Haven?

5 A. Yes.

6 Q. Do you remember that person's name?

7 A. Rose -- Roessel, Roessel, I can't
8 pronounce her name right now.

9 Q. Okay. Can you describe that
10 person's physical characteristics?

11 A. White hair, she's about sixty, she
12 listens --.

13 Q. Okay. So you had a good rapport
14 with that social worker?

15 A. I believe so.

16 Q. Okay. And can you try to spell that
17 social worker's name?

18 A. Roessel, R-O-E-S-S-E-L.

19 Q. Okay. That was the one that you had
20 a good relationship with?

21 A. Yes.

22 Q. Okay. And what was -- what -- can
23 you spell the other social worker's name?

24 A. Russel?

25 Q. Yeah.

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2 A. R-U-S-S-E-L.

3 Q. Okay. Okay. So it was Social
4 Worker Russel that you had issues with, correct?

5 A. Yes.

6 Q. Okay. And you felt that she was
7 very biased?

8 A. Yes.

9 Q. Okay. But Social Worker Roessel is
10 that how you pronounced it?

11 A. Yes.

12 Q. Okay. And you had a good
13 relationship with her, correct?

14 A. Yes.

15 Q. Okay. And did she help you start to
16 feel better?

17 A. Yes. I began taking medication when
18 I was in Green Haven.

19 Q. Okay. Okay. Could you take a look
20 at what's been marked as Exhibit Twenty-one? And just
21 flip through that, do you recognize that as your mental
22 health records?

23 A. Roessel. Yeah, this is Roessel.

24 Q. Okay. So that's the name there it
25 says entered by and then it says Catherine Roessel,

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2 correct?

3 A. Yes, yes.

4 Q. Okay. And that's the one that you
5 described that you had a good relationship with?

6 A. Yes.

7 Q. Okay. Then do you see your
8 patient's name on there?

9 A. Yes.

10 Q. And your date of birth?

11 A. Yes.

12 Q. Okay.
13 Okay. Now, if you look at
14 page -- do you see the page number in the bottom right-
15 hand corner of Exhibit Twenty-one?

15 A. Uh huh.

16 Q. Okay. That's a yes?

17 A. Yes.

18 Q. Okay. Now, looking at page four,
19 that indicated that you had dates of screenings for
20 O.M.H. and it lists a number of them, June 28th, 2000,
21 August of 2000. Do you see that list there?

22 A. Yes.

23 Q. Okay. Do you remember what -- do
24 you remember having screenings on those dates?

25 A. No.

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2 Q. Okay. So you don't know -- you
3 don't know what those screenings were?

4 A. No.

5 Q. Okay.

6 A. 2010.

7 Q. Yeah, it's got dates from 2000 to
8 2015, right?

9 A. Right.

10 Q. Okay. Turning back to page three of
11 Exhibit Twenty-one, it indicates -- it remains unclear
12 if Mr. Gunn requires mental health intervention and is
13 experiencing significant mental health symptoms at this
14 time. Is that true and accurate?

15 A. I don't know. I'm not a doctor.

16 Q. Okay. Fair enough. So that's just
17 -- that's what the social worker thought or the O.M.H.
18 staff?

19 A. Yes.

20 Q. Okay. It indicates that you would
21 consistently report depression, feelings of despair, a
22 lack of energy and seem to ruminate on your life not
23 getting better. Is that true and accurate?

24 A. Correct.

25 Q. Okay. Okay. And it says you

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2 presented with medical concerns and pain related to
3 allegedly being beat up by a sarge on September 16th,
4 2014. Is that something you reported to O.M.H.?

5 A. Yes, I reported that to I.G. too.

6 Q. Okay. That's a use of force that
7 you have a different lawsuit about, is that correct?

8 A. Yes.

9 Q. Okay. And just remind me, do you
10 remember what facility that was at?

11 A. Green Haven.

12 Q. Okay. Okay. And you admitted that
13 you did not believe Mental Health can help unless Mental
14 Health can do something about your security concerns or
15 give him a -- or give you an M.R.I., is that correct?

16 A. Correct.

17 Q. And you reported that since then
18 you've continued to send letters to O.M.H. and medical,
19 reporting depression and nightmares among other things,
20 often attributing this to your reported medical
21 concerns. Is that correct?

22 A. Correct.

23 Q. Okay. Then it said that your report
24 of mental health symptoms was vague and contradictory.
25 Would you agree that that's true?

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2 A. I don't know.

3 Q. Okay. Again, you just would leave
4 that to their expertise.

5 A. Correct.

6 Q. Okay. Have you -- did you
7 repeatedly express concern about having nightmares, but
8 when --?

9 A. Yeah.

10 Q. Okay. But when further questioned
11 you maintained that you do not recall any of the
12 nightmares?

13 A. Correct.

14 Q. Okay. And then looking at the next
15 paragraph in a similar fashion, you also offered
16 complaints about sexual abuse and sexual assault at
17 Elmira. Is that correct?

18 A. Correct.

19 Q. Further discussion on two occasions
20 has revealed that your definition of sexual abuse and
21 assault refers to being called a faggot and cinnamon.
22 Is that correct?

23 A. Yes.

24 Q. And you repeatedly denied any actual
25 physical touching of any kind. Is that correct?

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2 A. No.

3 Q. Okay. So you dispute that you said
4 that?

5 A. Right.

6 Q. Okay. Okay. Would you agree with
7 what the provider says with saying, he seems to often
8 overstate his concerns as he has with his memory loss,
9 depression and sexual abuse, would --?

10 A. No.

11 Q. You don't agree with that?

12 A. No.

13 Q. Okay. And it says given that when
14 his blanket statements are discussed further, it becomes
15 apparent that his labels don't typically follow
16 generally accepted definitions of these things. Is that
17 true and accurate?

18 A. I don't know.

19 Q. Okay. So you're -- you're saying
20 that the O.M.H. staff determined that?

21 A. Correct.

22 Q. Okay. Do you see O.M.H. staff
23 currently?

24 A. Yeah.

25 Q. How frequently do you see O.M.H.

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2 staff now?

3 A. Well, the guy that I'm seeing now,
4 he's out frequently so I'm probably seeing him once
5 every six months.

6 Q. Okay. And when you were at Green
7 Haven, do you remember how frequently you were seeing
8 Mental Health staff?

9 A. Once a month.

10 Q. Okay. And we can just wrap up with
11 the exhibits. Can you take a look at what's been marked
12 as Exhibit Twenty-two? And are those -- these two
13 pages, are those in your hand -- is that in your hand?
14 Well, let's do them one at a time. So this first page,
15 is that your handwriting?

16 A. Correct.

17 Q. Okay. And that's -- do you know
18 what this document is?

19 A. Sick call slip.

20 Q. Okay. And do you know when you
21 wrote it?

22 A. March 30th.

23 Q. Of 2013?

24 A. Yes.

25 Q. Okay. Okay. Can we actually --

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2 what I'd like to do is just split this exhibit up, so
3 can we just go off the record real quick and --.

4 (Off the record, 12:45 p.m. to 12:46
5 p.m.)

6 BY MS. MCKAY: (Cont'g.)

7 Q. Okay. So we've fixed the exhibit,
8 so -- Exhibit Twenty-two is a single sheet of paper,
9 correct, Mr. Gunn?

10 A. Yes.

11 Q. Okay. And that's the sick call slip
12 in your handwriting, correct?

13 A. Right.

14 Q. Okay. And that's the sick call slip
15 that you completed for medical care regarding the sexual
16 assault. Is that correct?

17 A. Correct.

18 Q. Okay. And then taking a look at
19 what's been marked as Exhibit Twenty-five. Okay. Is
20 that document in your handwriting?

21 A. Yes.

22 Q. Okay. And that's pertaining to
23 grievance number E.L. four zero zero -- or, excuse me.
24 E.L. four zero seven seven seven thirteen. Is that
25 correct?

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2 A. Correct.

3 Q. Okay. And that one was -- so that's
4 a grievance from -- that you filed on April 11th, 2013.
5 Is that correct?

6 A. Correct.

7 Q. Okay. And you -- now, is Exhibit
8 Twenty-five, that's in your handwriting?

9 A. Yes.

10 Q. And the contents are true and
11 accurate?

12 A. Yes.

13 Q. And it's signed by you?

14 A. Yes.

15 Q. Okay. And you wrote it on what day?

16 A. May 31st.

17 Q. 2013?

18 A. Correct.

19 Q. Okay.

20 A. Well, actually, the date is wrong.

21 Q. Why was -- why is the date wrong?

22 A. Because it's dated 4/11/13.

23 Q. Your grievance was dated that date,
24 right?

25 A. No. There's an error somewhere.

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2 Q. Okay. What do you mean by that?

3 A. Yeah, my grievance is dated 4/11/13.

4 Q. Okay. And then this was --?

5 A. The year is probably, you know,
6 wrong. I probably have the year wrong.

7 Q. You don't think you wrote this in
8 2013?

9 A. Right.

10 Q. What year do you think you wrote it?

11 A. Huh. Oh, yeah, this is -- yeah,
12 this is correct.

13 Q. Okay. You wrote --.

14 A. This is correct.

15 Q. You wrote -- you wrote this in -- on
16 May 31st, 2013. Is that correct?

17 A. Yes.

18 Q. Okay. And you were following up on
19 a grievance you filed on --

20 A. 4/11.

21 Q. -- on April 11th, 2013, right?

22 A. Correct.

23 Q. Okay. Okay. Now, Mr. Gunn, do you
24 have any anticipated witnesses in this case besides
25 yourself?

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2 A. No.

3 Q. Okay. Now, you have indicated for
4 your certain medical providers. Do you remember
5 indicating some medical staff that --

6 A. Yes.

7 Q. -- you listed? Okay.

8 A. Jill Northrop.

9 Q. Okay. And do you -- what -- how --
10 what -- what does she know about the matters --

11 A. She --.

12 Q. -- we've discussed?

13 A. She is the one who found the
14 hemorrhoid and Dr. Qureshi for Green Haven and --.

15 Q. Okay. So let's just go through them
16 one at a time. So N.P. Northrup, she is the one who
17 found the hemorrhoid, correct?

18 A. Correct.

19 Q. Okay. And anything else that she
20 knows about the incidents that we've talked about?

21 A. No.

22 Q. Okay. And then --?

23 A. Well, she knows -- she knows who
24 C.O. Perry is.

25 Q. Okay. She knows who C.O. Perry is

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2 you said?

3 A. Yes.

4 Q. Okay. Anything else that you would
5 anticipate her to know about the events we've talked
6 about?

7 A. No.

8 Q. Okay. And then what's the name of
9 the doctor that you mentioned at Green Haven?

10 A. Qureshi.

11 Q. Okay. Is that Q-U-R-E-S-H-I?

12 A. Yes. Somewhere around there.

13 Q. Okay. And what does that doctor
14 know about or what -- what would they be anticipated to
15 testify about?

16 A. My mental illness.

17 Q. Okay.

18 A. Because one of the things about me
19 speaking to O.M.H. is that there's no trying, there --
20 there's the psych, the psychologist there that was
21 running today was married to a prison guard. And so
22 when they asked me to tell them things about my
23 nightmares and stuff, I refrained from opening it up.

24 Q. Okay. I'm just asking, this wasn't
25 involving Dr. Qureshi though, right?

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2 A. Well, her supervisor, they -- it
3 took them a long time to get me to take medication.

4 Q. Okay.

5 A. So they -- they went above and
6 beyond and got me to where I am today.

7 Q. Okay. So you're saying Dr. Qureshi
8 helped you?

9 A. Yes.

10 Q. Okay.

11 A. She prescribed the Prozac.

12 Q. Okay.

13 A. Because I wouldn't take nothing
14 else.

15 Q. Okay. And can you estimate how many
16 times you were seen by Dr. Qureshi?

17 A. For four years.

18 Q. Well, I'm wondering if you can
19 estimate how many times you were seen by her in that
20 four-year time period.

21 A. Maybe eight times --

22 Q. Okay.

23 A. -- because, like -- like I said, I
24 started off with DOCC Clinician Russel then I went to
25 Roessel and I wouldn't speak to people because of the

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 fear of retaliation.

3 Q. Okay.

4 A. Because, again, once I came into
5 Green Haven, within twenty-four hours, I was set up with
6 a weapon. I didn't even make it to chow.

7 Q. Okay.

8 A. So I went straight to the box.

9 Q. So you're describing issues with
10 security when you got to Green Haven?

11 A. Absolutely.

12 Q. Okay. And then anything else that
13 you would anticipate? So did you -- did you talk with
14 Dr. Qureshi about your incidents with security staff at
15 Green Haven?

16 A. She doesn't deal with security
17 issues.

18 Q. No, I'm just saying, did you -- when
19 she was treat -- is she -- is she a psychologist?

20 A. Psychiatrist, yes.

21 Q. Okay.

22 A. Psychiatrist.

23 Q. Psychiatrist. Okay. And did you
24 talk with her about the issues that you were having with
25 security at Green Haven?

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2 A. Yes.

3 Q. Okay. And she helped treat you with
4 the Prozac, correct?

5 A. Right.

6 Q. Okay. And then what about a Dr.
7 Maltese?

8 A. He's the psychiatrist here.

9 Q. Okay. At Sing Sing?

10 A. Yes.

11 Q. Okay. And what would he be able to
12 -- what would he be anticipated to testify to?

13 A. My mental -- my mental illness.

14 Q. Okay. So your -- your condition,
15 your -- where you're at with treatment you -- you're
16 saying?

17 A. Correct.

18 Q. Okay. And you're still taking
19 Prozac, correct?

20 A. Right. And I'm still having
21 nightmares. I had a nightmare last night about mice.

22 Q. About what?

23 A. Mice, there was --.

24 Q. About mice?

25 A. Yeah, I -- I woke up screaming.

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2 Q. Like, mice, M-I-C-E, you're saying?

3 A. Yes.

4 Q. Okay. Have you seen O.M.H. staff
5 about that or no?

6 A. No.

7 Q. Okay. But you -- but you talk to
8 O.M.H. staff about your nightmares?

9 A. Yeah, I talk to them about my
10 nightmares, but I don't give them information because of
11 the fear of retaliation. When I talk to them about
12 sexual abuse, sexual assault, bad things happen to me.

13 Q. Okay.

14 A. And I want to refrain from talking
15 about my sexual assaults so nothing else bad will happen
16 to me again. So --

17 Q. Okay.

18 A. -- this is ongoing, nothing has
19 stopped.

20 Q. Okay.

21 A. I transfer from one facility to the
22 next and these officers also transfer from one facility
23 to the next.

24 Q. Okay. You're saying that you have
25 security -- you have issues with security staff at all

1 Gunn v Bedcler, et al - 7-22-2020 - Darrell Gunn
2 these -- at all these facilities, correct?

3 A. Correct.

4 Q. Okay. Okay. So that concludes the
5 deposition. I will send you a copy of the transcript
6 from today. You already have the one from -- from the
7 first half. And what I want to make you aware of is if
8 you are not successful in this lawsuit, then I'll be
9 seeking costs for the -- for the deposition.

10 And the main thing to note about the
11 deposition transcript, which I've already told you with
12 respect to the first half, but again, the same thing
13 applies with, if you review it, I'm going to send you
14 again, what's called an errata sheet for you to review
15 and for you to tell if there's anything that you think
16 might be a mistake, okay. Does that make sense?

17 A. Yes. Well --.

18 Q. Okay. And so hang on, just -- hang
19 on one second. The -- the -- like I told you last time,
20 what I want you to make sure you look for is if there's
21 any grammatical errors, sometimes when the transcriber
22 puts it down, they might have something misspelled,
23 something like that. You can put that on there.

24 And then also if you see anything on
25 there -- so do you understand what I mean by grammatical

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2 errors?

3 A. Yes.

4 Q. Okay. And then I also just want you
5 to make sure if you see anything that's substantively
6 incorrect. If you learn later that it's incorrect, make
7 sure that you write to me and notify me that -- of that,
8 okay?

9 A. Okay. Now, I wanted to point out
10 that --.

11 THE REPORTER: You want this question on
12 the record?

13 MS. MCKAY: You -- you -- you can.

14 BY MS. MCKAY: (Cont'g.)

15 Q. Do you have a question for me, Mr.
16 Gunn?

17 A. Yes.

18 Q. Okay.

19 A. I wanted to point out that during
20 the grievance interviews, that they were saying that I
21 was writing grievances requesting a facility transfer.
22 So all of the investigations that was done by sergeants
23 were saying that I was requesting a facility transfer,
24 which is untrue.

25 Q. Okay. Okay. So you're talking

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2 about how your -- how your grievance was dealt with?

3 A. Correct.

4 Q. Okay. All right. That's
5 understood. Any documents that are in evidence they're
6 -- they're all there so --.

7 A. Right, they're -- they're all there
8 because one group of sergeants was saying that I was --

9 Q. Mr. Gunn, I -- I just --.

10 A. -- requesting --.

11 Q. I don't know that it is particularly
12 important for what we've just talked about, and it's --
13 we're running a little bit long.

14 A. Okay.

15 Q. I'm sure you're hungry. I think --
16 I think that we understand your -- your testimony, so --
17 okay? Unless you have a question that you need to ask
18 me?

19 A. No.

20 Q. Okay. Do you understand what I've -
21 - what I've gone over with you?

22 A. Yes. You want --

23 Q. Okay.

24 A. -- you want to get the transcripts
25 notarized. You want me to send them to you.

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2 Q. Right. And I'm -- yeah, I'm going
3 to send you today's transcript and you can look that one
4 over too, okay?

5 A. Now, what about the medical --?

6 Q. Mr. Gunn, at this time I'm just
7 going to have them -- we can -- we can go off the
8 record, that's fine.

9 A. Okay.

10 (Off the record, 1:01 p.m.)

11 (The deposition concluded.)

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2 STATE OF)

3 COUNTY OF)

4 I, DARRELL GUNN, have read the foregoing record of
my testimony taken at the time and place noted in the heading
5 hereof and do hereby acknowledge:
(Please check one)

6 () That it is a true and correct transcript of
same.

7 () With the exceptions noted in the attached
errata sheet, it is a true and correct transcript of same.

X

DARRELL GUNN

Sworn to before me this
11 day of 2020.

12 X
NOTARY PUBLIC
My Commission Expires:

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2 I, HANNAH ALLEN, do hereby certify that the foregoing
3 testimony of DARRELL GUNN was taken by me, in the cause, at
4 the time and place, and in the presence of counsel, as stated
5 in the caption hereto, at Page 1 hereof; that before giving
6 testimony said witness was duly sworn to testify the truth,
7 the whole truth and nothing but the truth; that the foregoing
8 typewritten transcription, consisting of pages number 1 to
9 137, inclusive, is a true record prepared by me and completed
10 by Associated Reporters Int'l., Inc. from materials provided
11 by me.

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13 HANNAH ALLEN, Reporter

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2 ASSOCIATED REPORTERS INTERNATIONAL, INC.
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4 Date:
5 Case Name: Gunn v Bedcler, et al
6 Index Number: 6:16-CV-06206
7 Deponent: DARRELL GUNN
8 Deposition Date: 7-22-20
9 Examining Attorney: Heather McKay

10 Dear Mr. Gunn,

11 Please read and make any changes and/or corrections in your
12 testimony and sign the transcript in the presence of a notary
13 public. Please do so within thirty (30) days. If you fail
14 to sign the transcript within thirty (30) days, it will be
15 delivered to the appropriate parties without signature.
16 Return the transcript with corrections, if any, to:

17 OFFICE OF NY STATE ATTORNEY GENERAL
18 BY: MARK MITCHELL A.A.G.
19 The Capitol
20 Albany, New York

21 CORRECTIONS:

22	_____	Word or phrase:	_____
23		Corrected to:	_____
24	_____	Word or phrase:	_____
25		Corrected to:	_____
26	_____	Word or phrase:	_____
27		Corrected to:	_____
28	_____	Word or phrase:	_____
29		Corrected to:	_____
30	_____	Word or phrase:	_____
31		Corrected to:	_____
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33		Corrected to:	_____
34	_____	Word or phrase:	_____
35		Corrected to:	_____

36 _____
37 Date Signed

38 _____
39 DARRELL GUNN

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EXHIBIT 3

STATE OF NEW YORK

COURT OF CLAIMS

D.G.,¹

Claimant,

DECISION

-v-

THE STATE OF NEW YORK,

Claim No. 124009

Defendant.

D.G.,

Claimant,

-v-

THE STATE OF NEW YORK,

Claim No. 124108

Defendant.

D.G.,

Claimant,

-v-

THE STATE OF NEW YORK,

Claim No. 124149

Defendant.

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ATTORNEY GENERAL
CLAIMS BUREAU

FILED

FEB - 1 2017

STATE COURT OF CLAIMS
ALBANY, NY

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FEB 07 2017

NYS OFFICE OF ATTORNEY GENERAL
Binghamton Regional Office

¹ In Motion No. M-85877, the Court sua sponte, amended the caption of Claim No. 125097 to reflect a fictitious name for claimant pursuant to Civil Rights Law § 50-b (1) (*D.G. v State of New York*, Ct Cl, Mar. 5, 2015, Schaewe, J., Claim No. 125097, Motion No. M-85877). For the same reason, the Court sua sponte amends the captions of Claim Nos. 124009, 124108, and 124149 to also reflect a fictitious name for claimant.

D.G.,

Claimant,

-v-

THE STATE OF NEW YORK,

Claim No. 125097

Defendant.

BEFORE: **HON. CATHERINE C. SCHAEWE**
 Judge of the Court of Claims

APPEARANCES: **For Claimant:**
 D.G., pro se

For Defendant:
 HON. ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL
 BY: Aaron J. Marcus, Assistant Attorney General

Claimant, an inmate proceeding pro se, initially filed three claims which all alleged different causes of action pertaining to the same incident. In Claim No. 124009, claimant alleged that on March 29, 2013, while he was incarcerated at Elmira Correctional Facility (Elmira), Correction Officer (CO) T. Perry sexually assaulted him during the course of a "pat/frisk," and that thereafter CO Bescler intentionally kicked him in the left shin. In Claim No. 124108, claimant alleges that on March 29, 2013, CO Perry conducted an allegedly unnecessary pat/frisk during which Perry sexually assaulted claimant. In Claim No. 124149, claimant alleges that on March 29, 2013, Correction Sergeant Claflin, an area supervisor, negligently supervised CO Perry, who purportedly sexually assaulted claimant during the course of a pat/frisk. In the answers to each of the foregoing claims, defendant State of New York (defendant) asserted that

the claim was not timely filed and served because the pertinent notice of intention to file a claim was invalid, inadequate and legally insufficient.² Apparently believing that these claims may have been untimely, claimant moved for and was granted permission to file and serve a late claim based solely upon CO Bescler's conduct (*D.G. v State of New York*, UID No. 2014-044-530 [Ct Cl, Schaewe, J., July 7, 2014]).³ In Claim No. 125097, filed in response to the Court's determination, claimant alleges that he was returning to his cell based upon a direct order from CO Perry when CO Bescler willfully and maliciously kicked him in the left shin. Trial of these matters were conducted by video conference on November 21, 2016, with claimant appearing at Green Haven Correctional Facility, defendant appearing at Elmira, and the Court sitting in Binghamton, New York.

At the commencement of the trial, the Court suggested to the parties that the claims be joined for trial, and the parties agreed. Accordingly, because Claim Nos. 124009, 124108, 124149, and 125097 all arise out of the same set of facts and to some extent involve a common question of law, these four claims were joined for trial (Court of Claims Act § 9[5]; *see also* CPLR 602 [a]).

At trial, claimant testified that on March 29, 2013 he was going to recreation. He had passed through the magnetometer without any alarm. He said that CO Perry pulled him aside for

² It is unclear whether notices of intention were actually served, and when. The Court does not have copies of any notices of intention, and thus cannot determine whether they were sufficient to extend the time in which to file and serve the claim(s). In any event, defendant never moved to dismiss these claims on this basis.

³ Claimant eventually did file and serve a claim, but it was not timely. The Court extended the time in which to file and serve the claim and denied defendant's motion to dismiss (*D.G. v State of New York*, Ct Cl, Mar. 5, 2015, Schaewe, J., Claim No. 125097, Motion No. M-85877). Claimant's motion for a default judgment was denied because defendant had filed and served an answer (*D.G. v State of New York*, Ct Cl, Mar. 21, 2016, Schaewe, J., Claim No. 125097, Motion No. M-88021).

a pat/frisk for no reason, and he complied with Perry's instructions. Claimant stated that Perry kicked his feet apart, started removing items from claimant's pockets, and then pulled claimant's underwear up into his groin. Claimant complained that it was painful, and said that Perry then began to squeeze claimant's genitals and rubbed both hands between claimant's legs. Claimant said that Perry then pushed his finger into claimant's rectum. Claimant further testified that Sergeant Claflin was observing and permitted Perry's activities. Claimant asked Perry his name, Perry told him, and then Perry told claimant to return to his cell. Claimant said that on his way back to his cell, CO Bescler kicked him in the shin.

Claimant said he took Naprosyn, which he had because of a shoulder injury. He stated that he was placed in keeplock, although he did nothing wrong. He requested sick call and was examined by a nurse. He said the nurse gave him an ice pack and tylenol. He requested sick call again, and maintained that the nurse found that the penetration had caused a hemorrhoid. He said the nurse referred him to a mental health counselor. Claimant stated that he told the mental health counselor that he wanted to press charges against the officers and the counselor laughed at him.

The Ambulatory Health Record (AHR) dated March 31, 2013 which was submitted by claimant (Claimant's Exhibit 2 at 1) contains the following pertinent information:

Alleges [sic] to have been sexually assaulted [sic] on Friday night during Pat Frisk
Claims officer pulled underwear up into genital area & violently squeezed his genital area
[Complains of] genital area & rectum soreness did not report to security or medical
Placed [call out] in Sick Call box & watch commander notified immediately . . .
[Ambulated] to 2nd Floor Infirmary [without] difficulty . . . denies having had any skin to
skin contact
States was not fondled at anytime during encounter.
genital & rectal area examined
No redness, swelling, abrasions or open areas noted.

Scrotal sac soft, [no] lumps or bumps noted
rectal area clean, dry, no open areas or redness noted
Dr. Braselmann notified of alleged incident & no orders given
May return to cell may apply ice to area . . . may take Tylenol

The AHR dated April 4, 2013 (Claimant's Exhibit 2 at 2) states:

[Patient] to sick call claiming on 3/29/13 he was sexually assaulted by a corrections officer during a pat frisk (see previous AHR)
[Patient] claims sexually assaulted 3/29/13 officer pulled his underwear up and penetrated rectum [with] his finger
Rectum - [no] tearing - [no] bleeding noted - [small] hemorrhoid noted
Penis - [no] lesion, testicles descended, symmetrical [no] redness, masses or tenderness [no] discomfort during exam . . . Will [continue] to monitor
[Mental Health Unit] referral

Claimant also submitted the DOCCS Directive pertaining to Control of and Search for Contraband (Claimant's Exhibit 3), particularly noting the section on personal searches, and the Directive pertaining to Sexual Abuse Prevention & Intervention (Staff on Inmate) (Claimant's Exhibit 4).

Claimant further submitted a copy of the grievance he filed regarding the matter (Claimant's Exhibit 6).⁴ CORC's finding was that the complaint was properly investigated, and noted that " '[s]exual [c]ontact' does not include touching of the intimate parts of another person during the performance of a pat frisk" (Claimant's Exhibit 7). Claimant also submitted a copy of a letter to the New York State Police requesting that CO Perry be arrested and prosecuted for sexual assault (Claimant's Exhibit 9).

⁴ Claimant also submitted into evidence a copy of the Central Officer Review Committee's (CORC) decision pertaining to two unrelated incidents (Claimant's Exhibits 1 and 8).

On cross-examination, claimant said he did not receive any mental health treatment prior to this incident. He said he is still receiving mental health treatment, and is taking antidepressant and anti-anxiety medications. However, he stated, he has received no substantive help.

He acknowledged that prior to March 29, 2013 he had never been randomly pat/frisked in any facility, although he had seen it done to others. When asked if he had been injured by being kicked in the foot, he stated that he was injured “psychologically.”⁵ Then he stated that he had been injured in both feet, but did not report those injuries to the nurse.

Claimant reviewed the Inmate Injury Report dated March 31, 2013 regarding the incident (Defendant’s Exhibit A). When asked why he waited two days to report the incident, he stated that he had reported it to the officers present at the time. When asked what physical injuries he incurred during the course of the incident, he insisted that he suffered a hemorrhoid, and stated that this symptom had resolved within about six months. He acknowledged that the Inmate Injury Report did not mention any injury to his shin, and that no such injury was mentioned in any of claimant’s AHRs.

Claimant rested his case at the close of his testimony. Counsel for defendant moved to dismiss the claim as against CO Perry on the basis that any sexual assault by a correction officer against an inmate is outside the scope of his employment. Counsel argued that claimant had introduced no evidence of any proclivity by Perry to commit such an offense, nor had any evidence been introduced that defendant possessed any knowledge of such a proclivity and had failed to remedy the situation. The Court reserved decision on the motion.

⁵ All quotes herein are taken from the Court’s notes of the proceeding, unless otherwise noted.

Defendant called CO Perry. Perry said he had been a correction officer for nine years. He said he routinely conducted random pat/frisks of inmates on their way to and from recreation. He described the pat/frisk procedure as follows: check the torso, check up and down each leg, run the edge of the hand in and around the groin and buttocks to check for weapons or drugs. He said that if the inmate's pants are low, he would pull them up. He stated that the purpose of the random pat/frisks is to keep weapons and drugs out of the recreation yards. He stated unequivocally that he did not grab claimant's groin in a violent manner, did not touch claimant in a violent manner, did not force or attempt to force a finger or fingers into claimant's rectum, and did not deviate in any way from the pat/frisk protocol. Perry said Sergeant Claflin was present at the time of the pat/frisk, but did not participate in it, nor did he engage in any force. Perry further said that claimant did not complain of any injury at the time.

Perry wrote a to-from memorandum dated April 1, 2013 regarding the incident (Defendant's Exhibit D). That memorandum contained the foregoing statements, and further indicated that Perry did not curse at claimant and did not kick claimant's feet.

On cross-examination, Perry said that he ordered claimant back to his cell after the pat/frisk because claimant had become loud, argumentative and upset.

Sergeant Claflin also testified for defendant. Claflin was the area supervisor, and Perry's superior. When asked why pat/frisks are randomly conducted, he stated that the procedure is an attempt to counter contraband, which is often moved through facilities. Claflin said that when claimant was pat/frisked, he became belligerent and so Claflin moved closer to observe the situation. Claflin testified that he did not see Perry sexually assault claimant in any way, the pat/frisk was not performed inappropriately, and Perry did not deviate from protocol. Claflin

said he did not hear Perry swear at claimant. Neither Claflin nor Bescler participated in the pat/frisk. Claflin did not see Bescler trip or otherwise touch claimant. Claflin said that claimant was returned to his cell after the incident because of his agitation, but was not under any sort of confinement. No misbehavior report was filed.

Claflin said he had not had any problems with claimant prior to this incident. He said that Perry performs his job as trained, and Claflin had never found Perry to be aggressive while under Claflin's supervision.

CO Bescler also testified. He stated that he has never kicked or tripped an inmate during his six years as a correction officer. He did not recall ever meeting claimant. He was never interviewed regarding the complaint that he had kicked claimant. He had no recollection of Perry pat/frisking claimant on March 29, 2013, but had seen Perry conduct pat/frisks. He said he had not seen Perry deviate from protocol during those occasions, nor had he ever seen Perry sexually assault an inmate.

Defendant rested its case at the close of Bescler's testimony. The Court reserved decision.

The Court will first address defendant's motion to dismiss the causes of action against defendant alleging that Perry sexually assaulted claimant (asserted in Claim No. 124009 and Claim No. 124108). The causes of action are in essence for civil battery because there was actual physical contact rather than just the imminent fear of contact.⁶ In order to recover on a cause of action for battery, a claimant must establish that there was bodily contact, which was offensive,

⁶ To establish a cause of action for assault, the claimant must prove physical conduct that placed him or her in imminent apprehension of harmful contact (*Bastein v Sotto*, 299 AD2d 432, 433 [2d Dept 2002]; *Charkhy v Altman*, 252 AD2d 413, 414 [1st Dept 1998]).

that is “wrongful under all the circumstances” (*Zgraggen v Wilsey*, 200 AD2d 818, 819 [3d Dept 1994]), and that the assailant intended to cause such contact (*see Messina v Alan Matarasso, M.D., F.A.C.S., P.C.*, 284 AD2d 32, 35-36 [1st Dept 2001]). It is not necessary for the assailant to intend to cause injury (*Zgraggen*, 200 AD2d at 819). While the lack of consent is considered when determining whether the contact was offensive, it is not conclusive (*see Goff v Clarke*, 302 AD2d 725, 726 [3d Dept 2003]; *Zgraggen*, 200 AD2d at 819). “Under the doctrine of respondeat superior, an employer may be vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer’s business and within the scope of employment” (*N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]; *see also Steinborn v Himmel*, 9 AD3d 531, 532 [3d Dept 2004]).

The contact claimant alleges that Perry committed would have been non-consensual, and thus would be intentional, offensive and wrongful under the circumstances. Claimant’s allegations are therefore sufficient to support a cause of action for battery. However and notwithstanding claimant’s contention to the contrary, it is well-settled that “[a]n act of sexual assault by an employee is a clear departure from the scope of employment, committed solely for personal reasons, and unrelated to the furtherance of the employer’s business” (*Dia CC. v Ithaca City School Dist.*, 304 AD2d 955, 956 [3d Dept 2003], *lv denied* 100 NY2d 506 [2003]; *McKay v Healthcare Underwriters Mut. Ins. Co.*, 295 AD2d 686, 687 [3d Dept 2002], *lv denied* 99 NY2d 503 [2002]; *see also N.X.*, 97 NY2d at 251). Defendant cannot be liable for this alleged battery under the theory of respondeat superior.

In situations where vicarious liability cannot be imposed on the basis of respondeat superior, “the employer [may] still be held liable under theories of negligent hiring, negligent

retention, and negligent supervision. However, a necessary element of such causes of action is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept 1997], *lv dismissed* 91 NY2d 848 [1997], *cert denied* 522 US 967 [1997] [citations omitted]; *see also Dia CC.*, 304 AD2d at 956). Claimant has failed to provide any evidence that defendant had an awareness of any proclivity on Perry's part to engage in the sort of conduct that caused claimant's injury, the failure of which is fatal to a finding of negligent hiring or retention (*see Detone v Bullit Courier Serv.*, 140 AD2d 278 [1st Dept 1988], *lv denied*, 73 NY2d 702 [1988]). Moreover, claimant's failure to show that defendant knew or should have known – had the supervision been adequate – of Perry's propensity for the type of conduct which injured Claimant is fatal to a cause of action for negligent supervision (*see Prentice v State of New York*, UID No. 2004-009-01 [Ct Cl, Midey, Jr., J., Mar. 30, 2004]). Accordingly, the cause of action against defendant for Perry's sexual assault contained in Claim No. 124009 is hereby dismissed, as is Claim No. 124108, which makes the same allegation. Claim No. 124149, in which claimant alleges that Claflin negligently supervised Perry, must also be dismissed.

Claim No. 124009 contained a cause of action alleging that CO Bescler kicked claimant, and Claim No. 125097 also makes that allegation. Claim No. 124009 included a copy of Grievance EL 40803-13 entitled "Kicked and Provoked." In this grievance, claimant indicates that he was sexually assaulted on March 29, 2013 and thereafter an "unnamed CO, white male, approx. 35 yrs, 5'8, 185 lbs., brown hair, intentionally kicked [him] in the shin (left leg),

practically tripping [him].”⁷ The Superintendent denied the grievance finding that the investigation did not reveal any evidence that the conduct occurred. The CORC upheld the Superintendent’s determination (Claimant’s Exhibit 8), specifically noting that when claimant was interviewed he could not identify either of the staff members allegedly involved or where the incident(s) took place.

As with claimant’s allegations regarding CO Perry, this is not a case where claimant was allegedly injured as a result of a CO’s use of force within the scope of his employment. Claimant did not establish that Bescler’s conduct was in furtherance of defendant’s business. Because an employer can only be vicariously liable for the tortious acts of its employees where those acts were committed in furtherance of the employer’s business and within the scope of employment (*N.X.*, 97 NY2d at 251), defendant cannot be held vicariously liable for Bescler’s action. Further, claimant did not establish that defendant had any knowledge of any propensity on the part of Bescler to commit such a battery, and thus cannot be held liable for negligent supervision (*see Prentice*, UID No. 2004-009-01). Accordingly, the cause of action against defendant for Bescler’s battery contained in Claim No. 124009 is hereby dismissed, as is Claim No. 125097, which makes the same allegation.

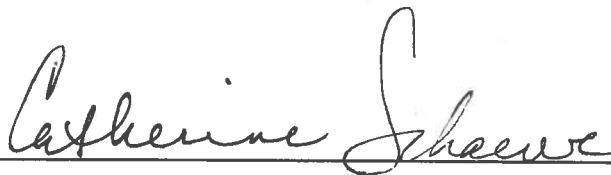
Finally, the Court would note that in any event, claimant was not a credible witness. The documentation and his account of what happened contained too many discrepancies and illogical conclusions. On the other hand, Perry, Claflin and Bescler were convincing witnesses. It is apparent that claimant was subjected to a random pat/frisk search in accordance with prison

⁷ Claim No. 124009, Exhibit A at 9.

directives, a procedure to which he had apparently not been previously subjected, and he interpreted it as a sexual assault. He might have been more credible if he had not waited two days to report it, if he had included in his initial report the “facts” he asserted later, and if there had been any physical evidence to support his assertion of a “violent” sexual assault. The existence of a small hemorrhoid did not constitute such evidence. Moreover, there was no medical evidence that the purported sexual assault would have caused claimant’s hemorrhoid.

Claim Nos. 124009, 124108, 124149 and 125097 are hereby dismissed in their entirety. Any motions not heretofore determined or upon which reservation was made are hereby denied. Let judgments be entered accordingly.

**Binghamton, New York
December 22, 2016**

A handwritten signature in cursive script, reading "Catherine Schaeve", written over a horizontal line.

**CATHERINE C. SCHAEWE
Judge of the Court of Claims**

EXHIBIT 4

STATE OF NEW YORK COURT OF CLAIMS

D.G.,¹

Claimant,

**DECISION AND
ORDER**

-v-

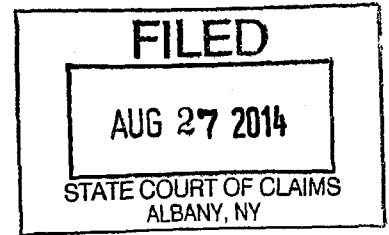
THE STATE OF NEW YORK,

Claim No. None
Motion No. M-84759

Defendant.

BEFORE:

HON. CATHERINE C. SCHAEWE
Judge of the Court of Claims



APPEARANCES:

For Claimant:
D.G., pro se

For Defendant:
HON. ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL
BY: Aaron J. Marcus, Assistant Attorney General

Claimant, an inmate appearing pro se, moves for permission to file and serve a late claim pursuant to Court of Claims Act § 10 (6) to recover for personal injuries allegedly received when he was assaulted by correction officers while in the custody of the Department of Corrections and Community Supervision at Elmira Correctional Facility. Defendant State of New York (defendant) opposes the motion.

A motion seeking permission to file and serve a late claim must be brought within the statute of limitations period attributable to the underlying cause of action (Court of Claims Act

¹ The Court has sua sponte amended the caption to reflect a fictitious name for claimant pursuant to Civil Rights Law § 50-b (1).

§ 10 [6]). The proposed claim alleges that claimant was sexually assaulted by one correction officer (CO) and kicked by another CO while both were acting within the scope of their employment. The statute of limitations for the intentional torts of assault and/or battery is one year from the date of accrual (CPLR 215 [3]). Claimant alleges his claim accrued on March 29, 2013. Accordingly, this motion mailed on March 3, 2014 is timely (*Matter of Unigard Ins. Group v State of New York*, 286 AD2d 58 [2d Dept 2001]).

Having determined that the motion is timely, the Court turns to a consideration of the merits of the motion itself. The factors that the Court must consider under Court of Claims Act § 10 (6) in determining a motion to permit a late filing of a claim are whether:

- 1) the delay in filing the claim was excusable;
- 2) defendant had notice of the essential facts constituting the claim;
- 3) defendant had an opportunity to investigate the circumstances underlying the claim;
- 4) the claim appears to be meritorious;
- 5) the failure to file or serve upon the attorney general a timely claim or to serve upon the attorney general a notice of intention resulted in substantial prejudice to defendant; and
- 6) claimant has any other available remedy.

Claimant asserts that the delay in filing a claim was justified because he is a lay person and was unaware of either the filing deadlines or proper court procedure, circumstances which he contends were further complicated by his incarceration. Claimant's ignorance of the requirements of the Court of Claims Act and the mere fact of his incarceration are not adequate excuses for his delay in timely serving a notice of intention or timely filing and serving a claim

(see *Matter of Sandlin v State of New York*, 294 AD2d 723 [3d Dept 2002], *lv dismissed* 99 NY2d 589 [2003]; *Plate v State of New York*, 92 Misc 2d 1033 [Ct Cl 1978]). Accordingly, this factor weighs against claimant.

The three factors of notice of the essential facts, an opportunity to investigate and the lack of substantial prejudice are frequently analyzed together since they involve similar considerations. Defendant concedes that it had some notice of the facts concerning this claim through grievance complaints filed by claimant and “for the purposes of this motion, concede[s] these [factors].”² Thus, these three factors weigh in claimant’s favor.

Another factor to be considered is whether claimant has any other available remedy. While defendant concedes that the Court of Claims is the proper form for this action, the Court finds that in light of the potential for claimant to commence an action pursuant to 42 USC § 1983 in Federal Court, this factor weighs against claimant.

The issue of whether the proposed claim appears meritorious is the most crucial component in determining a motion under Court of Claims Act § 10 (6), since it would be futile to permit a meritless claim to proceed (*Matter of Santana v New York State Thruway Auth.*, 92 Misc 2d 1, 10 [Ct Cl 1977]). In order to establish a meritorious claim, a claimant must demonstrate that the proposed claim is not patently groundless, frivolous, or legally defective, and that there is reasonable cause to believe that a valid claim exists (*id.* at 11). There is a heavier burden on a party moving for permission to file a late claim than on a claimant who has complied with the provisions of the Court of Claims Act (*see id.* at 11-12; *see also Nyberg v*

² Affirmation of Assistant Attorney General [AAG] Aaron J. Marcus, dated May 7, 2014, in Opposition to Motion, ¶ 7.

State of New York, 154 Misc 2d 199, 202-203 [Ct Cl 1992]). In determining whether the claim is meritorious, the Court must consider the substance of the claim rather than the sufficiency of the pleadings and must therefore look “at all of the submitted papers, including affidavits and exhibits, to determine whether a putative claimant has met the statutory burden of ‘apparent merit’ . . . [rather than be] confined to the text of the proposed claim itself” (*Mamedova v City Univ. of N.Y.*, 13 Misc 3d 1211[A], 2006 NY Slip Op 51775[U] [Ct Cl 2006]; see *Matter of Santana*, 92 Misc 2d at 11).

Claimant asserts that after he was sexually assaulted by CO Perry, CO Bescler intentionally kicked him in the left shin. Claimant argues that the wrongful conduct of both COs occurred within the scope of their employment and in the discharge of their duties, and that he has suffered physical and mental pain and anguish as a result. Conversely, defendant contends that certified medical records establish that claimant was examined two days after the incident and there was no evidence of sexual assault or battery.³

In his proposed claim, claimant alleges that CO Perry sexually assaulted him in the main hall laundry corridor at approximately 7:00 p.m. on March 29, 2013. He states that he informed CO Perry and Sergeant Claflin that he was in pain and then he returned to his cell pursuant to CO Perry’s order. At that time CO Bescler allegedly wilfully kicked claimant in the left shin, almost

³ The Court rejects defendant’s further assertion that because claimant had argued in a prior disciplinary proceeding that a different CO had sexually assaulted him on a separate occasion, claimant has established a pattern of making frivolous allegations against COs who are engaged in official, necessary conduct and the proposed claim in this matter is without merit. As a general rule, it is improper to show that a person has committed a particular act (in this instance, making frivolous allegations of sexual abuse in the proposed claim) because he or she committed a similar act on an unrelated occasion (making apparently unfounded allegations of sexual abuse in the prior disciplinary proceeding) (see e.g. *Matter of Brandon*, 55 NY2d 206 [1982]).

tripping him. Claimant specifically asserts that CO Bescler's conduct occurred "while acting within the scope of his employment and in the discharge of his duties."⁴

Claimant attached a copy of his grievance complaint (EL40803-13) concerning the March 29, 2013 incident. As he alleges in the proposed claim, claimant stated that he was sexually assaulted, and then he was kicked by a CO.⁵ Claimant did not include a copy of the Inmate Grievance Review Committee decision on the grievance. However, he appealed that decision to the Superintendent who noted that claimant was interviewed and provided a written statement, but no staff members were interviewed.⁶ The Superintendent found that the investigation did not reveal any evidence of the alleged conduct and denied the grievance. On further appeal, the Central Office Review Committee (CORC) upheld the Superintendent's determination and noted that the facility's administration conducted a proper investigation and when claimant was interviewed, he could not identify any staff member allegedly involved or where the incident took place. The CORC also indicated that claimant's allegations of sexual assault had been addressed in Grievance EL-40777-13, which was pending CORC's review. Claimant has not included a copy of Grievance EL-40777-13.⁷

⁴ Proposed Claim, ¶ 2.

⁵ At the time of his grievance, claimant did not specifically indicate that he was sexually assaulted by a CO. He also did not provide the name of the CO who allegedly kicked him.

⁶ Presumably there were no staff interviews because claimant did not provide any names.

⁷ Claimant has attached a copy of his grievance complaint in Grievance EL-40880-13 which concerns an allegedly improper keeplock confinement and deprivation of food, showers, phone, recreation and access to the law library from April 23, 2013 through April 26, 2013. However, this grievance does not appear to be related to the subject incident.

Claimant has also attached a portion of his Ambulatory Health Record (AHR) for the period March 31, 2013 through April 5, 2013. The AHR dated March 31, 2013 indicates that claimant alleged that a CO pulled his (claimant's) "underwear up into [his] genital area [and] violently squeezed his genital area. [Claimant complained of] genital area [and] rectum soreness."⁸ The facility nurse noted that claimant denied being fondled or having any skin to skin contact. The nurse further stated that upon examination there was no redness, swelling, abrasions or open sores and the scrotal sac was soft, without any lumps or bumps noted. The rectal area was clean and dry without any redness or open areas. The nurse also noted that claimant did not report the alleged incident to security or medical, but placed "c/o [presumably call out] in sick call box."⁹ Claimant's AHR dated April 4, 2013 notes that he returned to medical and again claimed that he had been sexually abused by an officer. This time claimant alleged that the "officer pulled [claimant's] underwear up and penetrated [his] rectum [with] his finger."¹⁰ An examination revealed that there was no tearing or bleeding, but that claimant had a small hemorrhoid. The records indicate that there were no lesions on his penis and his testicles were descended, symmetrical, without any redness, masses or tenderness. Claimant did not experience any discomfort during the exam.

To establish a cause of action for assault, the claimant must prove physical conduct that placed him or her in imminent apprehension of harmful contact (*Bastein v Sotto*, 299 AD2d 432, 433 [2d Dept 2002]; *Charkhy v Altman*, 252 AD2d 413, 414 [1st Dept 1998]). In order to

⁸ Proposed Claim, Exhibit A at 7.

⁹ *Id.*

¹⁰ *Id.* at 8.

recover damages for battery, a claimant must establish that there was bodily contact, which was offensive, that is “wrongful under all the circumstances” (*Zgraggen v Wilsey*, 200 AD2d 818, 819 [3d Dept 1994]), and that the defendant intended to cause such contact (see *Messina v Alan Matarasso, M.D., F.A.C.S., P.C.*, 284 AD2d 32, 35-36 [1st Dept 2001]). It is not necessary for the defendant to intend to cause injury (*Zgraggen*, 200 AD2d at 819). While the lack of consent is considered when determining whether the contact was offensive, it is not conclusive (see *Goff v Clarke*, 302 AD2d 725, 726 [3d Dept 2003]; *Zgraggen*, 200 AD2d at 819). “Under the doctrine of respondeat superior, an employer may be vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer’s business and within the scope of employment” (*N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]; see also *Steinborn v Himmel*, 9 AD3d 531, 532 [3d Dept 2004]).

With respect to the proposed cause of action alleging a sexual assault by CO Perry, claimant asserts that the CO intentionally pulled claimant’s underwear up into his genital area, violently squeezed the area, and penetrated claimant’s rectum with his (CO Perry’s) finger. Although this type of conduct is commonly referred to as a sexual assault, the cause of action is in essence for civil battery because there was actual physical contact rather than just the imminent fear of contact. CO Perry’s alleged non-consensual contact was intentional, offensive and wrongful under all of the circumstances. Claimant’s allegations are therefore sufficient to support a cause of action for battery. However and notwithstanding claimant’s contention to the contrary, it is well-settled that “[a]n act of sexual assault by an employee is a clear departure from the scope of employment, committed solely for personal reasons, and unrelated to the furtherance of the employer’s business” (*Dia CC. v Ithaca City School Dist.*, 304 AD2d 955, 956

[3d Dept 2003], *lv denied* 100 NY2d 506 [2003]; *McKay v Healthcare Underwriters Mut. Ins. Co.*, 295 AD2d 686, 687 [3d Dept 2002], *lv denied* 99 NY2d 503 [2002]; *see also N.X.*, 97 NY2d at 251). Because defendant cannot be liable for this alleged battery under the theory of respondeat superior, the proposed cause of action alleging sexual abuse lacks the appearance of merit.¹¹

With respect to his second proposed cause of action, claimant has alleged that CO Bescler intentionally kicked him in the left shin hard enough to almost trip him. Claimant alleges that he has suffered degradation, emotional distress and serious injury.¹² These allegations support an inference that CO Bescler's intentional kicking of claimant was not only non-consensual, but it was also offensive and wrongful under the circumstances. Claimant further alleges without contradiction by defendant, that CO Bescler's conduct occurred within the scope of his employment. The Court – deeming these facts alleged as true for purposes of this motion as it must (*see Jolley v State of New York*, 106 Misc 2d 550, 551-552 [Ct Cl 1980]) – finds that claimant has sufficiently alleged an unprovoked battery for which it appears at this stage in the

¹¹ In situations where vicarious liability cannot be imposed on the basis of respondeat superior, “the employer [may] still be held liable under theories of negligent hiring, negligent retention, and negligent supervision. However, a necessary element of such causes of action is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury” (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept 1997], *cert denied* 522 US 967 [1997] [citations omitted]; *see also Dia CC.*, 304 AD2d at 956). The Court notes that there is no evidence in the record to support any of these potential causes of action.

¹² The Court notes that claimant did not seek medical attention for any physical injury allegedly incurred as a result of the kick.

litigation that defendant may be vicariously liable.¹³ Accordingly, this proposed cause of action has at least the initial appearance of merit and this factor weighs in claimant's favor.

In conclusion, the Court finds that as pertaining to the proposed causes of action for battery based upon CO Perry's conduct (the alleged sexual assault), the Court finds that three of the six factors weigh in claimant's favor. However, the crucial issue of merit weighs against him. "[W]here 'the excuse offered for the delay is inadequate and the proposed claim is of questionable merit' " (*Matter of Robinson v State of New York*, 35 AD3d 948, 949-950 [3d Dept 2006], quoting *Matter of Perez v State of New York*, 293 AD2d 918, 919 [3d Dept 2002]), denial of a late claim application is appropriate. With respect to claimant's proposed cause of action for battery based upon CO Bescler's conduct, four of the six factors, including the all-important factor of merit, weigh in claimant's favor.

Claimant's motion for permission to late file a claim is therefore granted solely to the extent that claimant shall file a claim containing only a proposed cause of action for battery based on CO Bescler's conduct as set forth herein, and serve a copy of it upon the Attorney General within 40 days from the date of filing of this Decision and Order in the Office of the Clerk of the Court. The service and filing of the claim shall be pursuant to the strict requirements of the Court of Claims Act.

¹³ It is clear that correction officers are entitled to use reasonable physical force under certain circumstances such as "[w]hen any inmate . . . shall offer violence to any person, . . . or resist or disobey any lawful direction" (Correction Law § 137 [5]; see also 7 NYCRR § 251-1.2 [a]). However, there is no evidence (such as an Inmate Misbehavior Report or Use of Force Report) that CO Bescler's alleged conduct occurred during an authorized use of force situation.

Binghamton, New York
July 7, 2014


CATHERINE C. SCHAEWE
Judge of the Court of Claims

The following papers were read on claimant's motion:

- 1) Notice of Motion filed on March 6, 2014; Affidavit of D.G. sworn to on March 3, 2014, and attached exhibit.
- 2) Affirmation in Opposition of Aaron J. Marcus, AAG, dated May 7, 2014, and attached exhibits.

EXHIBIT 5

STATE OF NEW YORK
COURT OF CLAIMS

FILED

124108 MAR 24 2014

STATE COURT OF CLAIMS
ALBANY, N.Y.

DARRELL GUNN,

CLAIMANT,

-against-

THE STATE OF NEW YORK,

DEFENDANT.

C L A I M

Claim No.

Hon. _____

Claimant, DARRELL GUNN, appearing Pro-Se, complaining of defendant, the State of New York, alleges the following:

1. The Post Office address of the Claimant herein is Elmira Correctional Facility, P.O. Box 500, Elmira, N.Y. 14902, Chemung County.

2. This claim is for sexual assault of the State committed by its employee T. Perry, Correction Officer, for injuring the claimant while acting within the scope of his employment and in the discharge of his duties, on March 29, 2013, at Elmira Correctional Facility.

3. On March 29, 2013, at approximately 7:30 p.m. T. Perry, Correction Officer at Elmira Correctional Facility, working G-Block Pivot ordered Claimant to the wall without giving a reason per New York State Department of Corrections and Community Services, Departmental Directive Number 4910 Control of & Search for Contraband section III B, 2-a, (4) and (5), for a needless Pat Frisk, after Claimant cleared the magnetometer without any

detection, alarm and/or signal, here, a violation of United States Constitution Fourth Amendment and New York State Constitution Article 1, § 12.

4. Claimant placed his hands on the wall. Hereupon, Claimant was ordered to step back farther by C.O. T. Perry. Claimant complied.

5. T. Perry, Correction Officer then kicked Claimant in the right foot. As a result, Claimant stepped back further. Even so, Claimant was losing his balance. A violation of NY Correction Law § 137 ¶5.

6. T. Perry, Correction Officer began removing items from Claimant pant pockets, i.e., ink pen, ID, phonebook, and handkerchief.

7. T. Perry, Correction Officer then grabbed Claimant's underwear and VIOLENTLY pulled up, into the groin and rectum. C.O. Perry, similarly repeated, VIOLENTLY PULLING Claimant pant into groin and rectum.

8. Claimant felt horrible pain. The following converse took place:

GUNN: "I'm in pain."

C.O. T. Perry: "Shut the fuck-up."

GUNN: "You pulled my underwear into my groin area."

9. T. Perry, Correction Officer still, is VIOLENTLY pat frisking Claimant, in sum, touching, rubbing, and grabbing the body, genitals, and buttocks, and clothes.

10. T. Perry, Correction Officer grabbed Claimant genitals VIOLENTLY -- Claimant moved his leg distraughtly. In effect, C.O. Perry, held on to Claimant genitals stating: "I'm not grabb-

ing you."

11. T. Perry, Correction Officer, as impugment, then, immediately grabbed Claimant's underwear, then, repeated, again, VIOLENTLY PULLED Claimant's underwear, further, into genitals and rectum.

12. T. Perry, Correction Officer wantonness and unnecessary infliction caused Claimant ineffable pain. A violation of NY Correction Law § 137 ¶5, inter alia.

13. Claimant looked to the left to see supervising Sergeant Cliff Claflin, standing, thereabout two feet away.

14. Claimant's conscience was in shock to see Sgt. Claflin intentionally blocking any potential witnesses from observing the sexual assault by using his body to shield the Pat Frisk.

15. T. Perry, Correction Officer ordered Claimant to face forward. Claimant complied.

16. T. Perry, Correction Officer began to needlessly VIOLENTLY RUB AND TOUCH AND GRAB Claimant's genitals, rectum, and buttocks, malignantly, back and forth, with both hands, at the same time. A violation of United States Fourth Amendment; New York State Constitution Article 1, § 12.

17. Claimant stood aghast as Correction Officer Perry's finger penetrated Claimant's rectum through the Claimant's clothes causing the Claimant to sustain serious injury. See Boddie v. Schnieder, 105 F.3d 857, 860 (2d Cir.1997). See exhibit A.

18. Claimant felt despair and ineffable humiliation. Farmer v. Brennan, 511 U.S. 825, 832, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

19. Still, T. Perry, Correction Officer, removed Claimant's

right sneaker, checked it, C.O. Bescler, assisted, ran a hand held metal-detector over the sneaker. No alarm or reaction whatsoever.

20. T. Perry, Correction Officer used both hands to check Claimant foot.

21. T. Perry, Correction Officer placed the sneaker on the floor. Claimant placed foot back inside.

22. T. Perry, Correction Officer similarly, the left foot was done as stated above.

23. T. Perry, Correction Officer returned the contents of Claimant pockets i.e., ink pen, ID, phonebook, and handkerchief.

24. T. Perry, Correction Officer, ordered Claimant, "take it back to your cell."

25. Claimant immediately asked C.O. T. Perry, "what is your name."

26. T. Perry, Correction Officer, in response, "PERRY" -- wherewith, in innuendo, "make sure you get it right." See Bell v. Wolfish, 441 U.S. 520, 558-59, 99 S.Ct. 1861 (1979).

27. Claimant searched for witnesses and Claimant's mind was inundated with fear, pain, and humiliation. Only to see Sgt. Claflin standing there with his hat on. See Gregg v. Georgia, 428 U.S. 153, 173, 183, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976).

28. Claimant headed back to his cell.

29. Claimant was inimically kicked in the shin by C.O. Bescler as he headed back to his cell. Practically tripping Claimant.

30. All in all, the actions of T. Perry, Correction Officer,

were intentional, unwarranted, malicious and sadistic, humiliating, and degrading, among other things, for his sexual gratification. See *People v. Teicher*, 52 NY2d 638, 646, 439 NYS2d 846 (1981).

31. As a result of this sexual assault Claimant suffered severe physical and mental pain and anguish, depression, anxiety, and emotional duress, among other things, frequent headaches, nervousness, irritability, insomnia, and a loss of self-esteem, and heightened stress levels. A violation of United States Constitution Eighth Amendment; United States Fourteenth Amendment; and New York State Constitution Article 1, § 5 and New York State Constitution Article 1, § 11.

32. Claimant's rectum has been permanently scarred as a result of C.O. Perry malicious and sadistic incorrigible behavior from the said excessive physical force Sexual Assault that was barbaric and brutal, among other things, force upon Claimant wanton infliction of pain. Therewith, also, see N.Y.S.D.O.C.C.S. Departmental Directive No. 4910 section III f (1). *Hudson v. McMillian*, 503 U.S. 1, 9, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992).

33. Claimant suffered six months of pain from bowel movements.

34. Claimant discovers T. Perry, Correction Officer is a "Sexual Predator," with significant and compelling information based on repeated and pattern of attacks on non-consenting, non-violent, non-threatening, and unsuspecting prisoners. See Grievance No. EL-39497-12--CORC decision date September 26, 2012; and EL-40101-12--CORC decision date March 27, 2013. See Exhibit B.

35. Claimant has experienced sexual assault by T. Perry, Correction Officer nefarious actions and incorrigible behavior

notwithstanding, N.Y.S.D.O.C.C.S. Departmental Directive #4028A-Sexual Abuse Prevention & Intervention-Staff-on-inmate.

36. Claimant has experienced retaliation for reporting the sexual assault contrary to N.Y.S.D.O.C.C.S. Departmental Directive #4028A -- Sexual Abuse Prevention & Intervention-Staff-on-Inmate.

37. Claimant experienced intentional misconduct by prison officials, among other things, retaliatory action, by correction officers, as is noted: see N.Y.S.D.O.C.C.S. Grievance Numbers: EL-40798-13; EL-40801-13; EL-40803-13; EL-40868-13; and EL-40880-13; and, in so doing, is a self-evident truth that is contrary to Correction Law § 138 ¶4; United States Constitution First Amendment; United States Constitution Fourteenth Amendment; New York State Article 1 § 8; and New York State Article 1, § 11. See *Hartman v. Moore* 547 U.S. at 256, 126 S.Ct. 1695 (2006).

38. Claimant experienced a Sexual Assault, among other things, from T. Perry, Correction Officer, deliberate indifference to Claimant's prisoner right to be free from cruel and unusual punishment per Correction Law § 70 ¶2 (a),(b),(c), inter alia.

39. Claimant's Liberty as a prisoner to be free from cruel and unusual punishment was violated by T. Perry, Correction Officer, whom sexually assaulted and harassment and retaliatory action was totally without penological justification. See *Meriwether v. Faulkner*, 821 F.2d 408 (1987); *Rhodes v. Chapman*, 452 U.S. 337, 345; *Caldwell v. Miller*, 790 F.2d at 600. Also, See N.Y.S.D.O.C.C.S. Grievance Number EL-41073-13, as Substantial evidence.

40. Claimant posed no security reason for bodily search that was maliciously motivated by T. Perry, Correction Officer, and unrelated to institutional security, and hence "totally without penological justification. Indeed, overwhelmingly violating the United States States Constitution Eighth Amendment against cruel and unusual punishment. See *Meriwether v. Faulkner* 821 F.2d 408, 418, (1987); *Hudson v. Palmer*, 468 U.S. 517, 530, 104 S.Ct. 3194, 3202, 82 L.Ed.2d 393; *Rodes v. Chapman*, 452 U.S. 337, 346, 101 S.Ct. 2392, 69 L.Ed.2d 2959; *Smith v. Chrans*, 629 F.Supp. 606, 610-11 (CD. ILL. 1986).

41. T. Perry, Correction Officer penetrated Claimant rectum with his hand, undoubtly, in effect, all told, sexual contact through clothing for sexual gratification. See *Boddie v. Schnieder*, 105 F.3d 857, at 861 (2d Cir.1997). Clearly no legitimate law enforcement or penological justification under the color of state law can be inferred from C.O. Perry's conduct.

42. T. Perry, Correction Officer, deliberate indifference to Claimant health and safety caused Claimant serious medical needs. Hereof, Sexual Misconduct by Corrections Staff against a prisoner is prohibited in all states by departmental policy and/or law. See *Farmer v. Brennan*, 511 U.S. 825, ---, 114 S.Ct. 1970, 1977, 128 L.Ed.2d 811 (1994).

43. Sexual Assault in prison, whether committed by staff or another inmate, is a form of torture that violates international human rights law, the U.S. Constitution, and state law. In sum, sexual assault is not part of the penalty of Claimant's criminal conviction sentence, caused by T. Perry, Correction Officer for his self-gratification, among other things. See *Farmer v.*

Brennan, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). See Exhibit A.

44. In addition, United States Eighth Amendment combined with United States Fourteenth Amendment prohibits cruel and unusual punishment in penal institutions. Whether a specific act constitutes cruel and unusual punishment is measured by "the evolving standards of decency that mark the progress of a maturing society." *Hudson v. McMillian*, 507 U.S. 1, 8-10, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992).

45. Moreover, Claimant request this court not use the "malicious and sadistic" standard because there was no disturbance or other emergency circumstance, albeit, his U.S. Constitution Eighth Amendment and N.Y.S. Constitution Article 1, § 5 rights were violated by T. Perry, Correction Officer conducting random, non-emergency, suspicionless, clothed body searches in abusive fashion. See *Hudson v. McMillian*, 503 U.S. 1, 7, 112 S.Ct. 995, 999, 117 L.Ed.2d 156 (1992).

46. Claimant is filing this action Pro-Se and unfamiliar with the law. Thus, the United States Supreme Court held that in *Haines v. Kerner* 404 U.S. 519, "A Pro-Se complaint however in artfully pleaded 'must be held to 'less stringent standard than formal pleadings drafted by lawyers. See also *Estelle v. Gamble*, 429 U.S. 97; *Federal Exp. Corp. v. Hobbeck*, 552 U.S. 389.

47. Claimant request court to allow future amendment to claim as pertinent information, facts, statements, among other things, evidence comes available.

48. The particulars of Claimant's damages are as follows:

a) Pain and Suffering

Claimant rectum hemorrhoid lasted six months, including soreness, swelling, internal bleeding, burning, discomfort, abrasion, still, on goings of irritation, discomfort, abrasion, during bowel movements.

b) Mental Anguish

Depression, stress, loss of sleep, nightmares, anxiety, retaliation, humiliation, embarrassment, ridicule, emotional duress, and anger.

c) Permanent Disability

Life changing episode, permanently mentally scarred, physical scar.

49. Notice of intention to file this claim was received in the office of the Clerk of the Court of Claims, on the 11th day of June, 2013, and in the Office of the Attorney General on the 27th day of June, 2013.

50. This claim is filed within one (1) year after the claim accrued as required by law.


51. This action is filed pursuant to sections 10 and 11 of the Court of Claims Act.

WHEREFORE, Claimant respectfully requests judgment against the defendant in the sum of five hundred thousand dollars (\$500,000).

DATED: March 13, 2014

DARRELL GUNN 03-B-2443
Elmira Correctional Facility
1879 Davis Street
P.O. Box 500
Elmira, New York 14902-0500

Respectfully submitted,


DARRELL GUNN 03-B-2443
Claimant, Pro-Se


V E R I F I C A T I O N

STATE OF NEW YORK)
) ss.:
COUNTY OF CHEMUNG)


DARRELL GUNN, being duly sworn, deposes and says:

I am the Claimant above named; I have read the foregoing claim against the State of New York and know its contents; the same is true to my knowledge, except as to the matter therein stated to be alleged on information and belief; and as to those matters, I believe it to be true.

Respectfully submitted,


DARRELL GUNN 03-B-2443
Claimant, Pro-Se

Subscribed and sworn to before me this
13 day of March, 2014.



N o t a r y P u b l i c
STEVEN D. LEE
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY, LIC. # 01LE6231045
COMMISSION EXPIRES NOV. 15, 20 14

STATE OF NEW YORK COURT OF CLAIMS

DARRELL GUNN,

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

) ss:

COUNTY OF CHEMUNG)

DARRELL GUNN, being duly sworn, deposes and says:

I am over the age of 18 and reside at Elmira Correctional Facility, P.O. Box 500, Elmira, NY 14902.

On March 13, 2014, I served the within upon the Attorney General of the State of New York by certified mail at the following address:

Office of Attorney General
Department of Law
Capitol Building
Albany, NY 12224

Said address being the address designated by the Attorney General for that purpose, by depositing a true copy of the within in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Subscribed and sworn to before me this
13 day of March, 2014.


NOTARY PUBLIC

STEVEN D. LEE
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY, LIC. # 01LE6231045
COMMISSION EXPIRES NOV. 15, 20 14

Respectfully submitted,



DARRELL GUNN 03-B-2443
Claimant-Pro Se

EXHIBIT 6

From
COC

STATE OF NEW YORK
COURT OF CLAIMS

FILED

124039 MAR 06 2014

STATE COURT OF CLAIMS
ALBANY, NY

-----X
DARRELL GUNN,

Claimant,

CLAIM FOR
DAMAGES

- against -

Claim No.

THE STATE OF NEW YORK,

Defendant.
-----X

Claimant, DARRELL GUNN, appearing
Pro Se, complaining of defendant, the State
of New York, alleges the following upon infor-
mation and belief:

1. The Post Office address of
the claimant is DARRELL GUNN 03-B-2443,

Elmira Correctional Facility, P.O. Box 500,
Elmira, New York 14902-0500.

2. This claim is for assault and battery by the State of New York committed by its employee, Correction Officer Bescler, whom injured claimant while acting within the scope of his employment and in the discharge of his duties on March 29, 2013, at Elmira Correctional Facility.

3. On March 29, 2013, at approximately 7p.m. in Main Hall Laundry Corridor, Claimant was sexually assaulted by Correction Officer T. Perry. Hereafter, Correction Officer Bescler intentionally kicked me in the left leg shin, practically tripping claimant.

4. Claimant was under fear, pressure, duress, and serious injury, among

Other things, I explained to Officer Perry and area Supervisor Sergeant Daflin "I'm in pain." Thereupon, returned to his cell, pursuant to Correction Officer Perry's order, began to leave when, without just cause or provocation, the defendant Correction Officer Besler willfully and maliciously kicked claimant in the left leg Shin, practically tripping claimant.

5. Rather than help me Correction Officer Besler kicked me to suffer more injury, degradation and emotional distress, and serious injury. Hereupon, the actions of Correction Officer Besler were intentional and unwarranted.

6. As a result of the assault and battery, claimant was in pain and suffering, from the nefarious and malevolent

C.O. Besler for six months of hemorrhoids and soreness.

7. As a result of this incident claimant suffered severe physical and mental and emotional anguish and pain.

8. Claimant is psychologically scarred as a result by correction officer Besler.

9. This claim is filed within one (1) year after the claim accrued, as required by law

10. The particulars of Claimant's damage are as follows:

a) Pain and Suffering

My lower left leg was sore and bruised for one month. Also, I experienced hemorrhoids for six months.

b) Mental anguish

Claimant still suffers from loss of sleep, heightened anxiety and depression and stress.

11. This action is Filed pursuant to sections 10 and 11 of the Court of claims Act.

WHEREFORE, claimant respectfully Requests judgment against the defendant in the sum of \$ 19,000 dollars.

Respectfully Submitted,


Darrell J. _____

DARRELL GUNN 03-B-2445
Pro SE - Claimant

VERIFICATION

STATE OF NEW YORK) ss.:
COUNTY OF CHEMUNG

DARRELL GUNN being duly sworn, deposes and says that s/he is the Petitioner in the within proceeding; that s/he has read the foregoing Petition and knows the contents thereof; that the same is true to her/his knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters, he believes them to be true.


Petitioner DARRELL GUNN OS-B-2443 PRO SE

Sworn to before me this 3rd day
of MARCH 2014


NOTARY PUBLIC

Charles D. Caswell
Notary Public, State of New York
Chemung County, No. 01CA6200259
(Commission Expires Jan 25, 2017)

EXHIBIT A

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICE
INMATE GRIEVANCE COMPLAINT

49

HARASSED AND DEPRIVED

Grievance No.

EL40880-13

ELMIRA

CORRECTIONAL FACILITY

Date May 7, 2013

Name DARBELL GUNN

Dept. No. 03B2443

Housing Unit G-5-20

Program

AM

PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident) *

Description of Problem: (Please make as brief as pos) On 4/23/13, approximately 7pm, after Lieutenant Bullard-grievance investigation interview, 40425, approx. 12:30pm, I experienced, a surreptitious keeplock confinement, by C.O. Taylor. In which, I was not given feed-up trays, deprived of food, showers, phone, recreation, and law library on 4/23/13 and 4/24/13. Added to this, I was denied recreation on 4/26/13, 5-company-recreation.

Grievant
Signature

Darrell H

Continued
on separate
paper

Grievance Clerk

Date:

Advisor Requested ☒ YES☐ NO

Who: Mental Health

Action requested by inmate: Disciplinary action for C.O. Taylor; I.E. investigation; Mental Health request; process this grievance all three stages per dept. dir. #4040; Process this grievance code #49 per dept. dir. #4040.

This Grievance has been informally resolved as follows

This informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature

Date:

Witnessed by you are and will be heard by the Inmate Grievance Resolution Committee (IGRC).
The deadline to the time limit may be requested under Directive #4040 section 701.6(g).

DARRELL GUNN 03-B-2443 5/13 6-5-20 Grievance Complaint Continuation

escorting C.O. Cole, stated "Stop making up lies and you'll come out." Again, on 4/30/13, I was denied recreation, 5-company-recreation, escorting C.O. Cole, stating: "you was not injured" - pertaining to my sexual assault.

Undoubtly, the two-day keeplock confinement I experienced was cruel and unusual punishment and degradation. Indeed, contrary to prison policy and was unrelated to institutional security. Hence, totally without penological justification.

All told, C.O. Taylor, a incorrigible and vindictive prison guard, violated the New York State Constitution, United States constitution, correction law, and my prisoner's rights. Combined, under the color of law. Herewith, deliberate indifference; repeated misconduct; pattern misconduct; intentional misconduct; Official misconduct; and negligence, in official capacity as a prison guard whom, performed duties - causing me undue hardship, injury, pain and suffering, mentally and physically alike.

I conclude, no witness wants to be subject to retaliation by a malicious and sadistic prison staff. A witness will be subject to the same punishment I'm experiencing. A thorough and proper investigation will require I.G.R.C. representative, to interview possible witnesses in the area of incident, i.e., 6-Block-5 company area. Without a I.G.R.C. inmate rep. doing a investigation, I will receive a unfair, partial and improper investigation, including untruth-written statements by prison staff.

Struggling,
Darrell Gunn

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

)ss.:

COUNTY OF CHEMUNG)

Description of documents *Grievance Complaint De Facto Keeplock confinement*1. DARRELL GUNN, being duly sworn, depose and say,

I am over the age of eighteen (18) years old and a competent witness.

On May 7, 2013, I placed accurate, correct and true copies of the above described documents in a properly addressed envelope and filled out the necessary forms to have New York State Department of Correctional Services' employee(s) at the Elmira Correctional Facility in Elmira, NY, to either use my free legal mail postage, authorize the advancement of funds, or use funds from my prisoner inmate account to purchase U.S. Mail postage and affix same to said envelope and, then place same in the care and control of said DOCs employee(s) to process and mail the aforementioned documents by the U.S. Postal Service via First class U.S. Mail to the following:

I. G. R. C.

Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902

and I declare under penalty of perjury that the same is accurate, correct and true as stated upon information and belief, and as to those matters, I believe them to be true.



DARRELL GUNN 03-B-2443
Elmira Correctional Facility
Box 500
Elmira, NY 14902-0500

Subscribed and sworn to before me this

7th day of MAY, 2013

Notary Public

STEVEN D LEE
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY
LIC. #01LE6231045
COMMISSION EXPIRES 11-15-14

DARBELL GUNN 03-B-2443

G-5-20

May 29, 2013

Sergeant Santiago

In re: Denied law library

Dear Sgt. Santiago:

On 5/27/13, enroute to my 6:30pm call-out (law library), at G-Block Pivot, I went through metal detector without any alarm or incident. Hereupon, I was "pat Frisked," needlessly. Thereafter, I was ordered back to my cell, for wearing "thermal underwear" after 4/15. I asked prison guard, where is this rule written at. I would like to read it. This prison guard (name not available) challenged me to grieve him. I explained, "I don't want to grieve you. I want to read the rule. I know you can't wear a winter coat after April 15. That's the rule." I was directed to read P and P.

Nevertheless, I explained, to G-Block A-Officer why I was sent back. He explained, I should read Facility rule book. In so doing, the Elunita Facility Inmate Orientation Handbook, page 23, states: "Winter coat." Thermal underwear is not listed anywhere in Handbook, what-so-ever.

Rather, in truth, I'm not allowed to wear thermal underwear for outside trips (i.e., facility transfer, medical, court, funeral, death bed).

Moreover, I was denied law library (i.e. access to courts) consequently, as a result of this unwritten rule. The fact is, I have court deadlines and current court cases combined.

I'm a key stakeholder in DOCCS - serving a LWOP sentence - for a crime I didn't commit. Similarly, prison guards tenacity to punish me is an injustice - inflicted upon me that can not be placed into words! These unwritten rules causes me stress that's off the chart and under the radar, as much pain and suffering, concomitant - physical and mental. I should not have to suffer like this at the hands of prison guards. Animals don't get treated like this! In sum, how does one serve a LWOP sentence? How does one anticipate dying in prison?

In other words my life is in despair. NY DOCCS failed to address the unique needs of LWOP. There's no programming for LWOP prisoners. There's a one size fits all policy. All programs are geared for inmates returning back to society.

In conclusion, I would like to go to law library 6:30 pm call-outs without being subjected to needless Prit Frisks and Unwritten

rules being enforced. In effect, this is harassment,
abuse of authority, and intentional misconduct. All
told, an undue hardship from a senseless unwritten
rule that serves no security interest, penological
objectives, or correctional goals.

STATE OF NEW YORK
COUNTY OF CHEMUNG } ss.:

Struggling,

Sworn to before me this

Darrell D.
Darrell D.

29th day of May, 2013

Charles D. Caswell
NOTARY PUBLIC

Charles D. Caswell
Notary Public, State of New York
Chemung Count, No. 01CA6200259
Commission Expires Jan. 26, 2017

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	Gunn, DARRI	DIN	03B2443	Date of Birth	5/1/70	Facility Name	Clinton
Subjective	Alleged to have been sexually assaulted on Friday night during PAT Frisk	Last Name	Gunn, DARRI	DIN	03B2443	Location	9-5-20
Objective		Date	3/31/13	Time	9:40 PM	Provider Orders	6/meds
Assessment	Claims Officer pulled underwear up into genital area & Vidently Squeezed his genital area						
Plan	Ch genital area + rectum done here did NOT report to security or medical Placed Ch in Sec-care box						
Signature Provider	Walter L. M... RN Transcribing Order Provider	Date	3/31/13	Time	9:40 PM		
Subjective	A+OX3 MAEW Amb to 2nd floor Infirmary's difficulty	Last Name	Gunn, DARRI	DIN	03B2443	Location	9-5-20
Objective	Skin was tender having had any skin to skin contact	Date	3/31/13	Time	9:40 PM	Provider Orders	Was not fondled at anytime during incident
Assessment	18.9-105- 114.5/97 97%						
Plan	Genital + rectal area examined No redness swelling, abrasions or open areas noted Scrotal pad soft, # bumps or bumps noted						
Signature Provider	Walter L. M... RN Transcribing Order Provider	Date	3/31/13	Time	9:40 PM		
Subjective	OT redness noted Dr. Blaschman notified of	Last Name	Gunn, DARRI	DIN	03B2443	Location	9-5-20
Objective	Alleged incident + no orders given	Date	3/31/13	Time		Provider Orders	
Assessment	May return to cell						
Plan	May apply ice to area + may take Tylenol 650mg PRN						
Signature Provider	Elaine B. T... RN Transcribing Order Provider	Date	3/31/13	Time			

Continue entry into next box if necessary

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	Gunn, Darrell	DIN	0332443	Date of Birth	5/11/70	Facility Name	ELMIRA
Subjective	<u>SICK CALL:</u>			Last Name <u>Gunn</u>			
Objective	PT TO SICK CALL claiming on 3/24/13 He was Sexually ASSAULTED by A Corrections officer during a PAT FEELX (see previous AME)			DIN <u>0332443</u>		Location <u>G-5-20</u>	
Assessment	PT claims actually assaulted 3/24/13 at officer pulled his underwear up and penetrated rectum & his finger Rectum - 5 tearing - & bleeding noted - sm hemorrhoid noted -			Date <u>4/4/13</u>		Time <u>AM SC</u>	
Plan	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/4/13</u>			Provider Orders: MHO Referral PASS and ESC - 9:00 AM			
Subjective	Pain - Abdominal - Rectal descended, sigmoidal & rectal masses by tenderness & discomfort during exam B Hall RN present during exam.			Last Name <u>Gunn</u>		DIN <u>0332443</u>	
Objective	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/4/13</u>			Location <u>G-5-20</u>		Time <u>0900 AM</u>	
Assessment	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/4/13</u>			Provider Orders: AC cream given			
Plan	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/4/13</u>			RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/4/13</u>			
Subjective	Arm sick call offender to sick call No general aches Stated DT incident 5 officer earlier the week			Last Name <u>Gunn, D.</u>		DIN <u>0332443</u>	
Objective	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/5/13</u>			Location <u>G-5-20</u>		Time <u>am x</u>	
Assessment	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/5/13</u>			Provider Orders: CIC - 16 up to 10 x 10 - instructions. 2 days - bandaging			
Plan	RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/5/13</u>			RN Transcribing Order/Provider # <u>Ball</u> Date/Time <u>4/5/13</u>			

Continue entry into next box if necessary.

INMATE GRIEVANCE COMPLAINT

44

KICKED AND PROVOKE

Grievance No.

EL40803-13

ELMIRA

CORRECTIONAL FACILITY

Date 4/18/13

Name DARBELL GUNN

Dept. No. 03-B2443 Housing Unit G-5-20

Program _____ AM _____ PM _____

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)

Description of Problem: (Please make as brief as pos) On 3/29/13, approximately 7 p.m. I was sexually assaulted, thereafter, a unnamed C.O., white male, approx. 35 yrs, 5'8, 185 lbs., brown hair, intentionally Kicked me in the shin (left leg) practically tripping me. Thereupon, intentional misconduct, Rules and regulation violations, deliberate indifference, dereliction of duty, provoked me to physical injury and mental anguish, alike. Equally, provoked me need-

Continued on
separate paperGrievant
Signature

DARBELL GUNN

Grievance Clerk

Date

Advisor Requested ☒ YES☐ NO

Who Prisoners' Legal Service OF NY

Action requested by inmate: Disciplinary action for C.O.; exclude Sergeant Powers from this grievance investigation; request I.G. investigation; process this grievance all three stages per dept. dir. #4040.

This Grievance has been informally resolved as follows:

Informal Resolution accepted:

If space needed only if reason for not accepting:

by Inmate

Date

Date

This form is to be filed with the Grievance Committee, P.O. Box 1000, Elmira, NY 14901.

When a grievance is filed, it must be processed within 90 days of the date of filing.

DARRELL GUNN 03-B-2443 G-S-20 4/18/13 Grievance Complaint continuation

lessly to an invidious physical altercation. Clearly, Contrary to institutional security, penological interest, correction goals and prison policy combined.

Consequently, I'm suffering from undue hardship, cruel and unusual punishment, and degradation, ascribed by this C.O.'s incorrigible behavior. Moreover, a violation of my prisoner's United States Constitutional and New York State constitutional rights, combined.

Wherefore, it is imperative prison officials follow their own rules.

Struggling,
Darrell G

DARRELL GUNN 03-B-2443
G-5-20

April 18, 2013

TO: I. G. R. C. ; and Mr. Paul Chappius, Jr., Superintendent

Re: Grievance Complaint

Dear Sir:

I request sergeant Powers be excluded from my grievance complaint investigation based on information, knowledge, and belief that I believe that I believe to be true as noted below:

There's a on-going trend, in truth, Sergeant Powers is biased, unfair, impartial, arbitrary and capricious. The fact is, Sergeant Powers, will give a favorable investigation to any of his peers.

WHEREFORE, I object to have Sergeant

Powers investigate my grievance complaint.

VERIFICATION

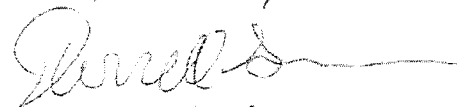
Date: April 18, 2013


STATE OF NEW YORK)
) ss.:
COUNTY OF CHEMUNG)

DARBELL GUNN, being duly sworn, says that he is the Grievant in the Grievance Complaint and that the foregoing statement is true to his own knowledge, herein, to be information and belief and as to those matters, he believes it to be true.

Sworn before me on April 18, 2013

Respectfully Submitted


DARBELL GUNN 03-B2443

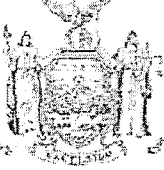

NOTARY PUBLIC

Charles D. Caswell
Notary Public, State of New York
Chemung County, No. 010A2203159
Commission Expires Jan. 28, 2017

GUNN, D

03B2443

C-1-5

	STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION	Grievance Number EL-40803-13	Design Code I/49	Date Filed 4/19/13
Associated Cases				
Facility Elmira Correctional Facility				
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE		Title of Grievance Kicked And Provoked		

9/18/13

GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART

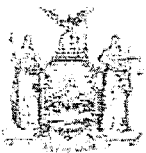
Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the facility administration has conducted a proper investigation. The grievant was interviewed, however, he could not identify either the staff member involved or where the incident took place. It is noted that his allegations of sexual assault on 3/29/13 are addressed in EL-40777-13, which is pending CORC disposition. CORC upholds the discretion of the facility administration in the assignment of staff to conduct grievance investigations.

CORC notes that Directive #4040, § 701.1, states, in part, that the grievance program is not intended to support an adversary process, and that the grievant may write to whomever he wishes regarding this complaint, as long as they are not on his Negative Correspondence and Telephone List.

CORC notes that the grievant has raised a separate issue in his appeal statement that was not addressed in his original complaint. This issue could be the subject of a separate grievance. CORC asserts that all relevant information must be presented at the time of filing in order for a proper investigation to be conducted at the facility level.

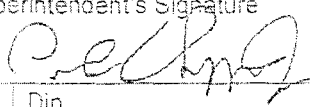
RAL/III



STATE OF NEW YORK
DEPARTMENT OF
CORRECTIONAL SERVICES

INMATE GRIEVANCE PROGRAM

SUPERINTENDENT

Grievance No. EL40-803-13	Date Filed 04/19/13
Facility ELMIRA CORRECTIONAL FACILITY	Policy Designation I
Title of Grievance KICKED AND PROVOKED	Class Code 49
Superintendent's Signature 	Date 05/07/13
Grievant GUNN, D	Housing Unit G-5-20

GRIEVANT CLAIMS HE WAS KICKED IN THE SHIN AND PROVOKED, WHICH HAS LED TO UNDUE HARDSHIP AND DEGRADATION, BY AN UNIDENTIFIED CO. NO STAFF INTERVIEWS WERE CONDUCTED. INMATE INTERVIEW WAS CONDUCTED AND WRITTEN STATEMENT IS ATTACHED. IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED BEHAVIOR OCCURRED. GRIEVANCE IS DENIED.

APPEAL STATEMENT

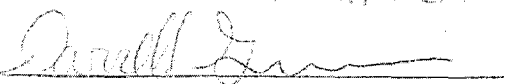
The C. O. Correction Officer who assaulted me is C.O. B. his post is in the gymnasium, and he monitors the bathroom in the gym. On this point, I gave a full description identifying C.O. B. This is significant, compelling, and tangible evidence.

Also, Lt. Ballard, during the investigation interview, gave me an innuendo caveat, stating "don't be wasting my

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. Please state why you are appealing this decision to C.O.R.C.

time." Thus, my grievance Fellow inmates Lt. Ballard and Superintendent Chagnier's reluctance alike Failed to consider the size of the offense. As a result, Supt. decision is without merit. Therefore, my grievance must be granted in full.



Grievant's Signature

5/16/13

Date

Grievance Clerk's Signature

Date

* An exception to the time limit may be requested under Directive # 4040, Section 7(1.5)(g).

State of New York
Court of Claims

DARRELL GUNN

Claimant(s)

v.

Affidavit of Service

Claim No. _____

THE STATE OF NEW YORK

Assigned Judge: _____

Defendant(s)

State of New York)
County of CHEMUNG)ss:

DARRELL GUNN, being duly sworn, deposes and says:

I am over the age of eighteen (18) years, and on March 3, 2014, I served a true copy of the attached Claim For Damages in the following manner:

(For a Claim):

☒ by mailing it in a sealed envelope, certified mail, return receipt requested, with postage prepaid, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:

Attorney General's Office
Department of Law
Capitol Building
Albany, NY 12224

OR

☐ by delivering it to the following person(s) at the address(es) indicated below:

(For a Notice of Motion and Supporting Papers):

☐ by mailing them in a sealed envelope, with postage prepaid, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:

Darrell Gunn
DARRELL GUNN (Signature) 03-D-1443
P-0 36

Sworn to before me this 3rd day
of March, 2014

Charles D. Caswell (40)
Notary Public, State of New York
Chemung County, No. 01CA6206239
Commission Expires Jan. 26, 2017

CoC
Claims
FILE
FROM
DEWISE STARR

THIS NOTICE CONTAINS
CONFIDENTIAL INFORMATION & IS
NOT TO BE RELEASED WITHOUT
AUTHORIZATION OF THE CLERK

STATE OF NEW YORK
COURT OF CLAIMS

FILED

124009 MAR 06 2014

STATE COURT OF CLAIMS
ALBANY, N.Y.

-----X

DARRELL GUNN,

Claimant,

CLAIM FOR

DAMAGES

- against -

Claim NO.

THE STATE OF NEW YORK,

Defendant.

-----X

Claimant, DARRELL GUNN, appearing
Pro Se, complaining of defendant, the State
of New York, alleges the following upon infor-
mation and belief:

1. The Post Office address of
the claimant is DARRELL GUNN 03-B-2443,

Elmira Correctional Facility, P.O. Box 500,
Elmira, New York 14902-0500.

2. This claim is for assault and battery by the State of New York committed by its employee, correction officer Bescier, whom injured claimant while acting within the scope of his employment and in the discharge of his duties on March 29, 2013, at Elmira Correctional Facility.

3. On March 29, 2013, at approximately 7 p.m. in Main Hall Laundry Corridor, Claimant was sexually assaulted by Correction Officer T. Perry. Hereafter, correction Officer Bescier intentionally Kicked me in the left leg shin, practically tripping claimant.

4. Claimant was under fear, pressure, duress, and serious injury, among

Other things, I explained to Officer Perry and area Supervisor Sergeant Claflin "I'm in pain." Thereupon, returned to his cell, pursuant to Correction Officer Perry's order, began to leave when, without just cause or provocation, the defendant Correction Officer Besler willfully and maliciously kicked claimant in the left leg shin, practically tripping claimant.

5. Rather than help me Correction Office Besler kicked me to suffer more injury, degradation and emotional distress, and serious injury. Hereupon, the actions of Correction Officer Besler were intentional and unwarranted.

b. As a result of the assault and battery, claimant was in pain and suffering, from the nefarious and malevolent

C.O. Bescker for six months of hemorrhoids and soreness.

7. As a result of this incident claimant suffered severe physical and mental and emotional anguish and pain.

8. Claimant is psychologically scarred as a result by Correction Officer Bescker.

9. This claim is filed within one (1) year after the claim accrued, as required by law.

10. The particulars of claimant's damage are as follows:

a) Pain and Suffering
My lower left leg was sore and bruised for one month. Also, I experienced hemorrhoids for six months.

b) Mental anguish

Claimant still suffers from loss of sleep, heightened anxiety, and depression and stress.

11. This action is filed pursuant to sections 10 and 11 of the Court of Claims Act.

WHEREFORE, claimant respectfully requests judgment against the defendant in the sum of \$ 19,000 dollars.

Respectfully submitted,


DARRELL GUNN 03-B-2493
Pro Se - Claimant

VERIFICATION

STATE OF NEW YORK) ss.:
COUNTY OF CHEMUNG

DARRELL GUNN being duly sworn, deposes and says that s/he is the Petitioner in the within proceeding; that s/he has read the foregoing Petition and knows the contents thereof; that the same is true to her/his knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters, he believes them to be true.


Petitioner DARRELL GUNN 03-B-2443 PRO SE

Sworn to before me this 3rd day

of MARCH 2014


NOTARY PUBLIC

Charles D. Caswell
Notary Public, State of New York
Chemung Count, No. 01CA6200259
Commission Expires Jan. 26, 2017

EXHIBIT A

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICE
INMATE GRIEVANCE COMPLAINT

FORM 213 (REV. 6/03)

HARASSED AND DEPRIVED

Grievance No.

EL40880-13

ELMIRA

CORRECTIONAL FACILITY

Date May 7, 2013

Name DARRELL GUNN

Dept. No. 03B-2443

Housing Unit G-5-20

Program _____ AM _____ PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)

Description of Problem: (Please make as brief as possible) On 4/23/13, approximately 7pm, after Lieutenant Ballard-grievance investigation interview, to 4/25, approx. 12:30pm, I experienced, a surreptitious keeplock confinement, by C.O. Taylor. In which, I was not given feed-up trays, deprived of food, showers, phone, recreation, and law library on 4/23/13 and 4/24/13. Added to this, I was denied recreation on 4/26/13, 5-company-recreation

Grievant
Signature

Darrell Gunn

continued
on separate
paper

Grievance Clerk

Date:

Advisor Requested ☒ YES☐ NO

Who: Mental Health

Action requested by inmate: Disciplinary action for C.O. Taylor; I.E. investigation; Mental Health request; process this grievance all three stages per dept. dir. #4040; Process this grievance code #49 per dept. dir. #4040.

This Grievance has been informally resolved as follows.

This Informal Resolution is accepted: _____

(To be completed only if resolved prior to hearing)

Grievant
Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).
An exception to the time limit may be requested under Directive #4040, section 701.6(g).

DARRELL GUNN 03-B-2443 5/13 6-5-20 Grievance Complaint Continuation

escorting C.O. Cole, stated: "Stop making up lies and you'll come out." Again, on 4/30/13, I was denied recreation, 5-company-recreation, escorting C.O. Cole, stating: "you was not injured" - pertaining to my sexual assault.

Undoubtly, the two-day keeplock confinement I experienced was cruel and unusual punishment and degradation. Indeed, contrary to prison policy and was unrelated to institutional security. Hence, totally without penological justification.

All told, C.O. Taylor, a incorrigible and vindictive prison guard, violated the New York State Constitution, United States Constitution, correction law, and my prisoner's rights combined, under the color of law. Herewith, deliberate indifference; repeated misconduct; pattern misconduct; intentional misconduct; Official misconduct; and negligence, in official capacity as a prison guard whom performed duties - causing me undue hardship, injury, pain and suffering, mentally and physically alike.

I conclude, no witness wants to be subject to retaliation by a malicious and sadistic prison staff. A witness will be subject to the same punishment I'm experiencing. A thorough and proper investigation will require I.G.R.C. representative, to interview possible witnesses in the area of incident, i.e., 6-Block-5 Company area. Without a I.G.R.C. inmate rep. doing a investigation, I will receive a unfair, partial and improper investigation, including untruth-written statements by prison staff.

Struggling,
Darrell Gunn

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

)ss.:

COUNTY OF CHEMUNG)

Description of documents: *Grievance Complaint De Facto Keeplock confinement*

I, DARRELL GUNN, being duly sworn, depose and say:

I am over the age of eighteen (18) years old and a competent witness.

On May 7, 2013, I placed accurate, correct and true copies of the above described documents in a properly addressed envelope and filled out the necessary forms to have New York State Department of Correctional Services' employee(s) at the Elmira Correctional Facility in Elmira, NY, to either use my free legal mail postage, authorize the advancement of funds, or use funds from my prisoner inmate account to purchase U.S. Mail postage and affix same to said envelope and, then place same in the care and control of said DOCS employee(s) to process and mail the aforementioned documents by the U.S. Postal Service via first class U.S. Mail to the following:

I. G. R. C.

Elmira Correctional Facility

P.O. Box 500

Elmira, NY 14902

and declare under penalty of perjury that the same is accurate, correct and true as stated upon information and belief, and as to those matters, I believe them to be true.

Darrell Gunn

DARRELL GUNN 03-B-2493
Elmira Correctional Facility
Box 500
Elmira, NY 14902-0500

Subscribed and sworn to before me this:

7th day of MAY, 2013

STEVEN D LEE

NOTARY PUBLIC, STATE OF NEW YORK

CHEMUNG COUNTY

LIC. #01LE6231045

COMMISSION EXPIRES

11-15-14

DARRELL GUNN 03-B-2443

G-5-20

May 29, 2013

Sergeant Santiago

In re: Denied law library

Dear Sgt. Santiago:

On 5/27/13, enroute to my 6:30pm call-out (law library), at G-Block Pivot, I went through metal detector without any alarm or incident. Hereupon, I was 'pat Frisked,' needlessly. Thereafter, I was ordered back to my cell, for wearing "thermal underwear" after 4/15. I asked prison guard, where is this rule written at. I would like to read it. This prison guard (name not available) challenged me to grieve him. I explained, "I don't want to grieve you. I want to read the rule. I know you can't wear a winter coat after April 15. That's the rule." I was directed to read P and P.

Nevertheless, I explained, to G-Block A-Officer why I was sent back. He explained, I should read Facility Rule book. In so doing, the Elmira Facility Inmate Orientation Handbook, page 23, states: "Winter coat." Thermal underwear is not listed anywhere in Handbook, what-so-ever.

Rather, in truth, I'm not allowed to wear thermal underwear for outside trips (i.e., facility transfer, medical, court, funeral, death bed).

Moreover, I was denied law library (i.e. access to courts) consequently, as a result of this unwritten rule. The fact is, I have court deadlines and current court cases combined.

I'm a key stakeholder in DOCCS - serving a LWOP sentence - for a crime I didn't commit. Similarly, prison guards tenacity to punish me is an injustice - inflicted upon me that can not be placed into words! These unwritten rules causes me stress that's off the chart and under the radar, as much, pain and suffering, concomitant - physical and mental. I should not have to suffer like this at the hands of prison guards. Animals don't get treated like this! In sum, how does one serve a LWOP sentence? How does one anticipate dying in prison?

In other words my life is in despair. NY DOCCS failed to address the unique needs of LWOP. There's no programming for LWOP prisoners. There's a one size fits all policy. All programs are geared for inmates returning back to society.


In conclusion, I would like to go to law library 6:30 pm call-outs without being subjected to needless pat frisks and unwritten

Rules being enforced. In effect, this is harassment, abuse of authority, and intentional misconduct. All told, an undue hardship from a senseless unwritten rule that serves no security interest, penological objectives, or correctional goals.

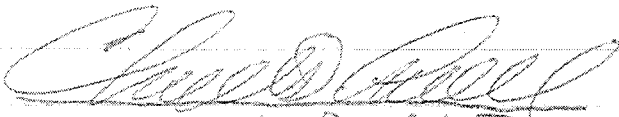
STATE OF NEW YORK)
COUNTY OF CHEMUNG) ss.:

Struggling

Sworn to before me this


Darrell D.

29th day of May, 2013


NOTARY PUBLIC

Charles D. Caswell
Notary Public, State of New York
Chemung Count, No. 01CA6200259
Commission Expires Jan. 26, 2017

Name	GUNN, DARRI	DIN	03B2443	Date of Birth	5/11/70	Facility Name	CLINTON
Subjective:	Alleged to have been sexually assaulted on Friday night during PAT FRISK			Last Name		Gunn, DARRI	
Objective:	Claims Officer pulled underwear up into genital area & violently squeezed his genital area			DIN		03B2443	
Assessment:	Ch genital area + rectum done. No redness noted. No bumps or bumps noted.			Date		3/31/13	
Plan:	did not report to security or medical. Placed in Sec cell by			Time		9:40pm	
Signature/Provider #	RN Transcribing Order/Provider #/Date/Time			Provider Orders:		Ameas	
Subjective:	A+OX3 MAEW			Last Name		Gunn, DARRI	
Objective:	Amb to 2nd floor Infirmary & difficulty			DIN		03B2443	
Assessment:	Skin was 18.9 - 105 - 145/97 97%			Date		3/31/13	
Plan:	Genital + rectal area examined. No redness, swelling, or open areas noted. Scrotal sac puff, bumps or bumps noted.			Time		9:40pm	
Signature/Provider #	RN Transcribing Order/Provider #/Date/Time			Provider Orders:		Was not fondled at anytime during encounter.	
Subjective:	Dr pedress noted			Last Name		Gunn, DARRI	
Objective:	Dr Blashman notified of alleged incident & no orders			DIN		03B2443	
Assessment:	Gulan			Date		3/31/13	
Plan:	may return to cell			Time		9:40pm	
Signature/Provider #	RN Transcribing Order/Provider #/Date/Time			Provider Orders:		MHA referral submitted & MHA notified @ 9:30pm	
Signature/Provider #	RN Transcribing Order/Provider #/Date/Time			Provider Orders:		may take Tylenol 650mg to cell	
Signature/Provider #	RN Transcribing Order/Provider #/Date/Time			Provider Orders:		3/31/13	

Continue entry into next box, if necessary.

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	Gunn, Dorell	DIN	0332443	Date of Birth	5/11/70	Facility Name	ESM 124
Subjective	Sick call:			Last Name Gunn			
Objective	Pt TO Sick call claiming dx 3/22/13 HE WAS SEXUALLY ASSAULTED by A corrections officer during A PBT FOX (see previous AMR)			DIN 0332443		Location G-5-20	
Assessment	Pt claims actually assaulted 3/24/13 at officer pulled his underwear up and penetrated rectum w his finger Rectum - 5 tearing - 0 bleeding noted - SM hemorrhoid noted -			Date 4/4/13		Time AM SC	
Plan	MHU Referral Pass G-5-20 ESC - 9:00 AM			Provider Orders:			
Signature/Provider #	B. Hall			RN Transcribing Order/Provider # Date/Time			
Subjective	Penis - lesions - vesicles descended, symmetrical redness, mass at base of penis & discomfort during exam			Last Name Gunn		DIN 0332443	
Objective	B. Hall RN present during exam.			Date 4/4/13		Time 09:00 AM	
Assessment	Will want to monitor			Location		Time	
Plan	Will want to monitor			Provider Orders:			
Signature/Provider #	B. Hall			RN Transcribing Order/Provider # Date/Time			
Subjective	Arm Sick call Appended to sick call of general aches started DIT incident 0 officer earlier this week			Last Name Gunn, D.		DIN 0332443	
Objective	0 officer earlier this week			Date 4/5/13		Location G-5-20	
Assessment	0 officer earlier this week			Time 2:00 PM		Provider Orders:	
Plan	0 officer earlier this week			OTC			
Signature/Provider #	B. Hall			RN Transcribing Order/Provider # Date/Time			

Continue entry into next box if necessary.

INMATE GRIEVANCE COMPLAINT

44

KICKED AND PROVOKED

Grievance No.

EL40803-13

ELMIRA

CORRECTIONAL FACILITY

Date 4/18/13

Name: DARRELL GUNN

Dept. No. 03-B-2443 Housing Unit G-5-20

Program _____ AM _____ PM _____

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident.)

Description of Problem: (Please make as brief as pos) ON 3/29/13, approximately 7 p.m., I was sexually assaulted, thereafter, a unnamed C.O., white male, approx. 35 yrs, 5'8, 185 lbs., brown hair, intentionally Kicked me in the shin (left leg), practically tripping me. Thereupon, intentional misconduct, Rules and regulation violations, deliberate indifference, dereliction of duty, provoked me to physical injury and mental anguish, alike. Equally, provoked me need-

Continued on
Separate paperGrievant
Signature

Darrell Gunn

Grievance Clerk

Date:

Advisor Requested ☒ YES ☐ NO

Who Prisoners' Legal Service of N.Y.

Action requested by inmate: Disciplinary action For C.O.; exclude Sergeant Powers from this grievance investigation; Request I. G. investigation; Process this grievance all three stages per dept. dir #4040.

This Grievance has been informally resolved as follows:

This matter is resolved as agreed.

This matter is resolved as agreed and is being handled.

Grievant

Signature

Date

This document is the property of the State of New York Department of Correctional Service. It is to be used only for the purpose of filing a grievance and is not to be distributed outside of the Department of Correctional Service.

DARRELL GUNN 03-B-2443 G-S-20 4/18/13 Grievance Complaint continuation

lessly to an invidious physical altercation. Clearly, Contrary to institutional security, penological interest, correction goals and prison policy combined.

Consequently, I'm suffering from undue hardship, cruel and unusual punishment, and degradation, ascribed by this C.O.'s incorrigible behavior. Moreover, a violation of my prisoner's United States Constitutional and New York State constitutional rights, combined.

Wherefore, it is imperative prison officials follow their own rules.

Struggling,
Darrell G

DARRELL GUNN 03-B-2443
G-5-20

April 18, 2013

TO: I. G. R. C. ; and Mr. Paul Chappius, Jr., Super-intendent

Re: Grievance Complaint

Dear Sir:

I request Sergeant Powers be excluded from my grievance complaint investigation based on information, knowledge, and belief that I believe that I believe to be true as noted below:

There's a on-going trend, in truth, Sergeant Powers is biased, unfair, impartial, arbitrary and capricious. The fact is, Sergeant Powers, will give a Favorable investigation to any of his peers.

WHEREFORE, I object to have Sergeant

Powers investigate my grievance complaint.

VERIFICATION

Date: April 18, 2013


STATE OF NEW YORK)
COUNTY OF CHEMUNG) ss.:

DARRELL GUNN, being duly sworn, says that he is the Grievant in the Grievance Complaint and that the foregoing statement is true to his own knowledge, herein, to be information and belief and as to those matters, he believes it to be true.

Sworn before me on April 18, 2013

Respectfully Submitted,


DARRELL GUNN 03-02443

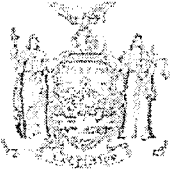

NOTARY PUBLIC

Charles D. Caswell
Notary Public, State of New York
Chemung County, No. 01CA0210459
Commission Expires Jan 28, 2017

Gunn, D

03B2443

C-1-5

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p>	Grievance Number EL-40803-13	Desig./Code I/49	Date Filed 4/19/13
	Associated Cases		
	Facility Elmira Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE		Title of Grievance Kicked And Provoked	

9/18/13

GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the facility administration has conducted a proper investigation. The grievant was interviewed, however, he could not identify either the staff member involved or where the incident took place. It is noted that his allegations of sexual assault on 3/29/13 are addressed in EL-40777-13, which is pending CORC disposition. CORC upholds the discretion of the facility administration in the assignment of staff to conduct grievance investigations.

CORC notes that Directive #4040, § 701.1, states, in part, that the grievance program is not intended to support an adversary process, and that the grievant may write to whomever he wishes regarding this complaint, as long as they are not on his Negative Correspondence and Telephone List.

CORC notes that the grievant has raised a separate issue in his appeal statement that was not addressed in his original complaint. This issue could be the subject of a separate grievance. CORC asserts that all relevant information must be presented at the time of filing in order for a proper investigation to be conducted at the facility level.

RAL/III



STATE OF NEW YORK
DEPARTMENT OF
CORRECTIONAL SERVICES

INMATE GRIEVANCE PROGRAM

SUPERINTENDENT

Grievance No

EL40-803-13

Date Filed

04/19/13

Facility

ELMIRA CORRECTIONAL FACILITY

Policy Designation

1

Title of Grievance

KICKED AND PROVOKED

Class Code

49

Superintendent's Signature

[Signature]

Date

05/07/13

Grievant

GUNN, D

Din

03-B-2443

Housing Unit

G-5-20

GRIEVANT CLAIMS HE WAS KICKED IN THE SHIN AND PROVOKED, WHICH HAS LED TO UNDUE HARDSHIP AND DEGRADATION, BY AN UNIDENTIFIED CO. NO STAFF INTERVIEWS WERE CONDUCTED. INMATE INTERVIEW WAS CONDUCTED AND WRITTEN STATEMENT IS ATTACHED. IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED BEHAVIOR OCCURRED. GRIEVANCE IS DENIED.

APPEAL STATEMENT

The C. Otfection Officer who assaulted me is C.O. B his post is in the gymnasium, and he monitors the bathroom in the gym. On this point, I gave a full description identifying C.O. B. This is significant, compelling, and tangible evidence.

Also, Lt. Ballard, during the investigation interview, gave me an innuendo caveat, stating "don't be wasting my

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. * Please state if you are appealing this decision to C.O.R.C.

time." Thus, my grievance. Fellow inmates Lt. Ballard and Superintendent Chipping's reluctance alike failed to consider the size of the offense. As a result, Supt. decision is without merit. Therefore, my grievance must be granted in full.

[Signature]

Grievant's Signature

5/16/13

Date

Grievance Clerk's Signature

Date

* An exception to the time limit may be requested under Directive # 4040, Section 7(1.6)(g).

State of New York
Court of Claims

DARBELL GUNN
DIN No. 03-B-2443, Claimant,

Affidavit in Support of Application
Pursuant to CPLR 1101 (i)

v.

Claim No.

The State of New York,

Defendant.

State of New York)
County of CHEMUNG) ss:

I, DARBELL GUNN, being duly sworn, hereby declare as follows:

1) I am the claimant in the above-entitled proceeding, I am an inmate in a federal, state or local correctional facility (state place of incarceration: Elmira Correctional Facility), and I submit this affidavit in support of my application for a reduction of the filing fee pursuant to CPLR 1101(i).

2) I currently receive income from the following sources, exclusive of correctional facility wages:

NONE

3) I own the following valuable property (other than miscellaneous personal property):

☒ NONE

☐ List property:

Value:

4) I have no savings, property, assets or income other than as set forth herein

- 5) I am unable to pay the filing fee necessary to prosecute this proceeding.
- 6) No other person who is able to pay the filing fee has a beneficial interest in the result of this proceeding.
- 7) The facts of my case are described in my claim and other papers filed with the court.
- 8) I have made no prior request for this relief in this case.

Darrell G
(signature)

Sworn to before me this 8th day of MARCH, 2014.

Charles D. Caswell
Notary Public

Charles D. Caswell
Notary Public, State of New York
Chemung County, No. 010A6200259
Commission Expires Jan. 26, 2017
AUTHORIZATION

I, DARRELL GUNN, inmate number 03-B-2443, request and authorize the agency holding me in custody to send to the Clerk of the Court of Claims certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

I further request and authorize the agency holding me in custody to deduct the filing fee from my correctional facility trust fund account (or the institutional equivalent) and to disburse those amounts as instructed by the Court of Claims.

This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT THE ENTIRE FILING FEE AS DETERMINED BY THE COURT OF CLAIMS WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.

Darrell G
(signature)

State of New York
Court of Claims

DARRELL GUNN

Claimant(s)

v.

Affidavit of Service

THE STATE OF NEW YORK

Claim No. _____

Assigned Judge: _____

Defendant(s)

State of New York

County of CHEMUNG

) ss:

DARRELL GUNN, being duly sworn, deposes and says:

I am over the age of eighteen (18) years, and on March 3, 2014, I served a true copy of the attached Claim For Damages in the following manner:

(For a Claim):

☒ by mailing it in a sealed envelope, certified mail, return receipt requested, with postage prepaid, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:

Attorney General's Office
Department of Law
Capitol Building
Albany, NY 12224

OR

☐ by delivering it to the following person(s) at the address(es) indicated below:

(For a Notice of Motion and Supporting Papers):

☐ by mailing them in a sealed envelope, with postage prepaid, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:

Darrell Gunn

DARRELL GUNN (Signature) 03-B-2443
PTO SE

Sworn to before me this 3rd day
of March, 2014

Charles D. Caswell (8)
Notary Public, State of New York
Chemung County, No. 01CA6200259
Commission Expires Jan. 26, 2017



Court of Claims State of New York

ROBERT ABRAMS BUILDING
FOR LAW AND JUSTICE
BOX 7344, CAPITOL STATION
ALBANY, NEW YORK 12224

(518) 432-3411

Richard E. Sise
Acting Presiding Judge

March 24, 2014

Robert T. DeCataldo
Chief Clerk

Darrell Gunn 03 B 2443
Elmira Correctional Facility
1879 Davis Street, P.O. Box 500
Elmira, NY 14901-0500

Dear Sir/Madam:

This will acknowledge receipt in this office on March 6, 2014 of the claim of:

DARRELL GUNN 03 B 2443 v. STATE OF NEW YORK

Said claim has been filed in this office as of March 6, 2014, subject to whatever legal objections may apply thereto and has been given:


Claim No. 124009

It is our determination that this claim accrued in Chemung County.

Pursuant to §206.6(f) of the Unified Rules for the Court of Claims, you are required to advise the Court of any change of address in the event you are transferred to another facility or released.

Please continue to file all original pleadings and the required number of copies with the Clerk's office in Albany (Uniform Rules for the Court of Claims §206.5). Filings may be made by personal service, mail or by facsimile transmission pursuant to §206.5-a of the Rules. The Court of Claims' fax filing number is 1-866-413-1069.

Very truly yours,


Robert T. DeCataldo
Chief Clerk

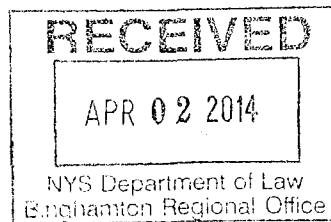
RTD/dsd

cc: Office of the Attorney General - Order Attached

Please see attached Order

EXHIBIT 7

STATE OF NEW YORK
COURT OF CLAIMS



DARRELL GUNN,

CLAIMANT,

-against-

THE STATE OF NEW YORK,

DEFENDANT.

OAG NO.
FILE CT.
SRVD AG

C L A I M

Claim No.

Hon. _____

~~13-158-284-014-171349-0~~

3/31/14

RECEIVED
NYS OFFICE OF THE
MAR 31 2014
ATTORNEY GENERAL
CLAIMS BUREAU

(x 4/1/14)

copy
ch
B

Claimant, DARRELL GUNN, appearing Pro Se, complaining of defendant, the State of New York, alleges the following upon information and belief:

1. The Post Office address of the Claimant herein is Elmira Correctional Facility, P.O. Box 500, Elmira, New York 14902, Chemung County.

3. This claim is for failure to protect of the state committed by its employee Sergeant Cliff Claflin, Correction Officer, for neglect of duty as a supervisor, intentional misconduct, and official misconduct condoned, promoted and participated in the sexual assault and physical injury and psychological injury to Claimant while acting within the scope of his employment and in the discharge of his duties on March 29, 2013, at Elmira Correctional Facility.

3. On March 29, 2013, at approximately 7:30 p.m. Sergeant Cliff Claflin, Correction Officer at Elmira Correctional Facility

working G-Block Pivot, Main Hall Laundry Corridor, as area supervisor was grossly negligent in supervising subordinate T. Perry, Correction Officer, who sexually assaulted Claimant. See *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir.1995).

4. Sergeant Cliff Claflin, Correction Officer directly became involved that that Claimant was at substantial risk of serious harm and failed to act, to protect or prevent by disregarding excessive risk to Claimant's health and safety.

5. Sergeant Cliff Claflin, Correction Officer ignored Claimant's statement: "I'm in Pain," during a non-emergency, non-threatening, suspicionless, clothed body Pat Frisk that was conducted abusively and without good-faith effort. See *Wilkins v. Gaddy*, 559 U.S. 34, 130 S.Ct. 1175, 175 L.Ed.2d 995 (2010).

6. Sergeant Cliff Claflin, Correction Officer, deliberate indifference to Claimant's risk of serious harm was lucid by showing personal involvement, that is, participating, using his body to block/shield the Pat Frisk to any potential witnesses. See *Collins v. Graham* 377 F.Supp.2d 241 (2005).

7. Here, Sergeant Cliff Claflin, Correction Officer, never responded to Claimant's need for protection from C.O. Perry, wanton infliction of pain and malicious and sadistic behavior.

8. As a result of this incident, consequently, Claimant is suffering from physical pain and injury, including, traumatic psychological injury.

9. The fact is, Sergeant Cliff Claflin actions and inactions combined violated Claimant's prisoner's rights of the United States of America Constitution and New York State Constitution, under the color of the law, inter alia, Correction Law § 70 2 (b)(c); 7 CRR-NY § 251-1.3 (a); and 7 CRR-NY § 251-1.6 (e)(1)(2).

10. As that is the case, accordingly, Sergeant Cliff Claflin negligence is unwarranted, inexcusable, and contrary to penological interests and correction goals alike.

11. Moreover, Sgt. Claflin condonation allowed C.O. T. Perry to penetrate Claimant's rectum with his hand, through clothing for sexual gratification. Here, causing Claimant serious injury (i.e. hemorrhoid). See exhibit A.

12. All told, Sexual Assault in prison, whether committed by staff or another inmate, is a form of torture that violates international human rights law, the U.S. Constitution and state law alike. In Short, sexual assault is not part of the penalty of Claimant's criminal conviction sentence. See *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

13. In addition, United States Eighth Amendment combined with United States Fourteenth Amendment prohibits cruel and unusual punishment in penal institutions, alike, New York State Constitution Article 1, § 5 and New York State Constitution Article 1, § 11. Whether a specific act constitutes cruel and unusual punishment is measured by "the evolving standard of decency, that mark the progress of a maturing society." See *Hudson v. McMillian*, 507 U.S. 1, 8-10, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992).

14. Notwithstanding, Claimant request this court not use the "malicious and sadistic" standard because there was no disturbance or other emergency circumstance, albeit, his U.S. Constitution Eighth Amendment and New York State Constitution Article 1, § 5 rights were violated by T. Perry, Correction Officer and Sergeant Cliff Claflin combined, conducting and supervising in their official capacity non-emergency, suspicionless, clothed body search in abusive fashion and not applied in a good-faith effort to maintain or restore discipline causing claimant harm physically and mentally and emotionally.

15. Claimant is filing this action Pro-Se and unfamiliar with the law. Thus, the United States Supreme Court Held that in Haines v. Kerner 404 U.S. 519, " A Pro-Se complaint however inartfully pleaded 'must be held to a less stringent standard than formal pleadings drafted by lawyers. See also Estelle v. Gamble, 429 U.S. 97; Federal Exp. Corp. v. Hobweck, 552 U.S. 389.

16. Claimant request this court to reserve his right for an amendment to claim as pertinent information, facts, statements, among other things, evidence, etc., comes available.

17. Notice of Intention was received in the office of the Attorney General on the 27th day of June, 2013, by certified mail return receipt requested.

18. This claim is filed within one (1) year after the claim accrued as required by law.

19. This action is filed pursuant to Section 10 and 11 of the Court of Claims act.

20. The particulars of Claimant's damages are as follows;

a) Pain and Suffering

Claimant rectum hemorrhoid lasted six months, including soreness, swelling, internal bleeding, burning, discomfort, abrasion; still, on goings of irritation, during bowel movements, stomach knots, loss of appetite, nervousness, loss of self-esteem, irritability, and frequent headaches.

b) Mental Anguish

Depression, anxiety, heighten stress levels, insomnia, nightmares, retaliation, embarrassment, humiliation, ridicule, emotional duress, and anger.

c) Permanent Disability

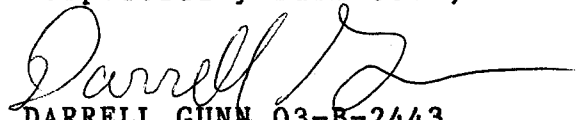
Life changing episode, permanently mentally scarred, physical scar.

WHEREFORE, Claimant respectfully requests judgment against the defendant in the sum of five hundred thousand dollars (\$500,000).

DATED: March 20, 2014

DARRELL GUNN 03-B-2443
Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902-0500

Respectfully submitted,


DARRELL GUNN 03-B-2443
Claimant, Pro-Se


46

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF CHEMUNG)

I, DARRELL GUNN, being duly sworn, deposes and says
that he is the Claimant in the enclosed proceeding, that he has read the
foregoing Claim for damages

_____ and knows its contents thereof, that the
same is true to deponent's own knowledge except as to matters therein stated to be alleged
upon information and belief, which matters deponent believes to be true.


DARRELL GUNN 03-B-2443
Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902

Sworn to before me this

20 day of MARCH, 20 14


NOTARY PUBLIC

STEVEN D. LEE
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY, LIC. # 01LE6231045
COMMISSION EXPIRES NOV. 15, 20 14

EXHIBIT A

AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	Gunn, Darrell	DIN	03B2443	Date of Birth	5/11/70	Facility Name	Clinton
Subjective:	Alleged to have been sexually assaulted on Friday night during PAT Frisk			Last Name Gunn, Darrell			
Objective:	Claims Officer pulled underwear up into genital area & Vidently Squeezed his genital area			DIN 03B2443		Location 9-5-20	
Assessment:	Plan: C/o genital area + rectum done			Date 3/31/13		Time 9:40pm	
Plan:	did NOT report to Security or Medical Placed C/o in Sick-call box			Provider Orders: #meds			
Signature/Provider # [Signature] RN Transcribing Order/Provider #/Date/Time [Signature] 3/31/13							
Subjective:	A+OX3, MAEW			Last Name Gunn, Darrell			
Objective:	Amb to 2nd floor Infirmary & difficulty			DIN 03B2443		Location 9-5-20	
Assessment:	Skin W+ denials having had any skin to skin contact			Date 3/31/13		Time 9:40pm	
Plan:	98.9-105 - 145/97 97%			Provider Orders: Status Was not fondled at anytime during procedure			
Signature/Provider # [Signature] RN Transcribing Order/Provider #/Date/Time [Signature] 3/31/13							
Subjective:	OT redness noted			Last Name Gunn, Darrell			
Objective:	Dr. Braselmann notified of alleged incident & no orders given			DIN 03B2443		Location 9-5-20	
Assessment:	May return to cell			Date 3/31/13		Time	
Plan:	May apply ice to area + PRSC pm			Provider Orders: MHA referral submitted & MHA notified @ 9:30pm @ may take Tylenol 650mg PO Q4hr			
Signature/Provider # [Signature] RN Transcribing Order/Provider #/Date/Time [Signature] 3/31/13							

Continue entry into next box if necessary.

AMBULATORY HEALTH RECORD PROGRESS NOTE

Name GUNN, DARNELL	DIN 0332443	Date of Birth 5/11/70	Facility Name ELMIRA
------------------------------	-----------------------	---------------------------------	--------------------------------

Subjective: <u>Sick call:</u>	Last Name <u>GUNN</u>
Objective: PT TO SICK CALL claiming on 3/29/13 HE WAS SEXUALLY ASSAULTED by A CORRECTIONS OFFICER DURING A PAT FOLLO (see previous AHE)	DIN <u>0332443</u> Location <u>G-5-20</u> Date <u>4/4/13</u> Time <u>AM SC</u>
Assessment: PT claims sexually assaulted 3/29/13	Provider Orders: <u>MHO Referral</u> <u>PASS GND ESC - 9:00 AM</u>
Plan: Officer pulled his underwear up and penetrated rectum w his finger Rectum - 5 tearing - o bleeding noted - sm hemorrhoid noted -	
Signature/Provider # <u>B. Hall</u> RN Transcribing Order/Provider #/Date/Time <u>Chip</u>	

Subjective: Penis - o lesion - testicles descended, symmetrical s redness, masses of tenderness	Last Name <u>Gunn</u>
Objective: o discomfort during exam	DIN <u>0332443</u> Location <u></u> Date <u>4/4/13</u> Time <u>0900 AM</u>
Assessment: B. Hall RN present during exam.	Provider Orders: <u>AC cream given</u>
Plan: Will can't to monitor	
Signature/Provider # <u>Chip</u> RN Transcribing Order/Provider #/Date/Time <u></u>	

Subjective: Am sick call	Last Name <u>Gunn, D.</u>
Objective: Offender to sick call w/o general aches	DIN <u>0332443</u> Location <u>G-5-20</u> Date <u>4/5/13</u> Time <u>am sc</u>
Assessment: States DIT incident o officer earlier this week.	Provider Orders: <u>OTC</u> <u>Ibuprofen x 10 o</u> <u>instructions. Verbalize</u> <u>understanding</u>
Plan: FU SC pm	
Signature/Provider # <u></u> RN Transcribing Order/Provider #/Date/Time <u>Don Nazz 03446</u>	

State of New York
Court of Claims

DARRELL GUNN,
DIN No. 03-B-2443, Claimant,

Affidavit in Support of Application
Pursuant to CPLR 1101 (f)

v.

Claim No.

The State of New York,

Defendant.

State of New York)
) ss:
County of CHEMUNG)

I, DARRELL GUNN, being duly sworn, hereby declare as follows:

1) I am the claimant in the above-entitled proceeding, I am an inmate in a federal, state or local correctional facility (state place of incarceration: ELMIRA), and I submit this ~~affidavit in support of my application for a reduction of the filing fee pursuant to CPLR 1101(f).~~

2) I currently receive income from the following sources, exclusive of correctional facility wages:

NONE

3) I own the following valuable property (other than miscellaneous personal property):

☒ NONE

☐ List property:

Value:


_____	_____
_____	_____
_____	_____
_____	_____

4) I have no savings, property, assets or income other than as set forth herein.

- 5) I am unable to pay the filing fee necessary to prosecute this proceeding.
- 6) No other person who is able to pay the filing fee has a beneficial interest in the result of this proceeding.
- 7) The facts of my case are described in my claim and other papers filed with the court.
- 8) I have made no prior request for this relief in this case.


(signature)

Sworn to before me this 20 day of MARCH, 2014.


Notary Public

STEVEN D. LEE
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY, LIC. # 01LE6231045
COMMISSION EXPIRES NOV. 15, 20 14

AUTHORIZATION

I, DARRELL GUNN, inmate number 03-B-2443, request and authorize the agency holding me in custody to send to the Clerk of the Court of Claims certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

~~I further request and authorize the agency holding me in custody to deduct the filing fee from my correctional facility trust fund account (or the institutional equivalent) and to disburse those amounts as instructed by the Court of Claims.~~

This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT THE ENTIRE FILING FEE AS DETERMINED BY THE COURT OF CLAIMS WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.


(signature)

State of New York
Court of Claims

DARRELL GUNN

Claimant(s)

v.

Affidavit of Service

Claim No. _____

THE STATE OF NEW YORK,

Assigned Judge: _____

Defendant(s)

State of New York)
County of CHEMUNG)ss:

DARRELL GUNN, being duly sworn, deposes and says:

I am over the age of eighteen (18) years, and on March 20, 2014, I served a true copy of the attached Claim for damages in the following manner:

(For a Claim):

☒ by mailing it in a sealed envelope, certified mail, return receipt requested, with postage prepaid, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:

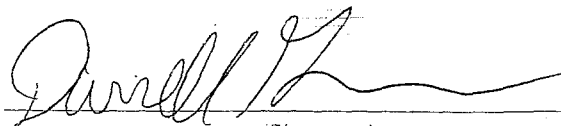
Attorney General's Office
Department of Law
Capitol Building
Albany, New York 1224-0341

OR

☐ by delivering it to the following person(s) at the address(es) indicated below:

(For a Notice of Motion and Supporting Papers):

☐ by mailing them in a sealed envelope, with postage prepaid, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:


(Signature)

Sworn to before me this 21 day
of MARCH, 2000. 2014


Notary Public

STEVEN D. LEE
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY, LIC. # 01LE6231045
COMMISSION EXPIRES NOV. 15, 20 14

DARRELL GUNN 03-B-2443
Elmira Correctional Facility
1879 Davis Street
Box 500
Elmira, New York 14902-0500
(607) 734-3901
March 20, 2014

ERIC T. SCHNEIDERMAN, Attorney General
State of New York
Attorney General's Office
Department of Law
Capitol Building
Albany, New York 12224-0341

RECEIVED
NYS OFFICE OF THE
MAR 31 2014
ATTORNEY GENERAL
CLAIMS BUREAU

RE: Filing of Claim for Damages

Dear Sir:

Enclosed is a claim for the damages caused by a state employee.

Respectfully submitted,


DARRELL GUNN 03-B-2443
Claimant-Pro Se

DARRELL GUNN 03-B-2443
ELMIRA CORRECTIONAL & RECEPTION CENTER

P.O. BOX 500

ELMIRA, NEW YORK 14902-0500

RECEIVED
NYS OFFICE OF THE

MAR 31 2014

ATTORNEY GENERAL
CLAIMS BUREAU

ERIC T. SCHNEIDERMAN, Attorney General
State of New York
Attorney General's Office
Department of Law
Capitol Building
Albany, New York 12224-0341

Claims

LEGAL MAIL

RARY
Materials



7006 2460 0001 A120 A032

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™

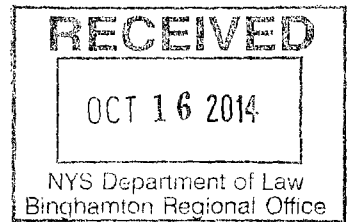


03/31/2014
14902-0500
03-B-2443

DARRELL GUNN 03-B-2443 Elmira Correctional Facility

EXHIBIT 8

STATE OF NEW YORK
COURT OF CLAIMS



DARRELL GUNN, D.I.N. 03-B-2443,

Claimant,

- against -

THE STATE OF NEW YORK,

Defendant.

~~14-1713490~~
13-158289-0

CLAIM FOR
DAMAGES

Cross
Check
BR

Claim No.

RECEIVED
NYS OFFICE OF THE
OCT 09 2014
ATTORNEY GENERAL
CLAIMS BUREAU

Claimant, DARRELL GUNN, appearing

PRO SE, complaining of defendant, the State of

New York, alleges the following upon information
and belief:

1. The Post Office address of the Claimant DARRELL GUNN 03-B-2443, GREEN Haven Correctional Facility, P.O. Box 4000, Stormville, New York 12582.

2. This claim is for battery by the State of New York committed by its employee, PESCLER, Correction Officer, whom, Kicked Claimant while acting within the scope of his employment and in the discharge of his duties on March 29, 2013, at Elmira Correctional Facility.

3. On March 29, 2013, at approximately 7pm in Main Hall Laundry

Corridor, Claimant was intentionally Kicked in the Left Leg Shin, practically tripping claimant

4. Claimant was returning to his cell, without causing a disturbance, among other things, traumatically under Fear, pressure, duress, emotional distress, in pain, under the description and direct order From PERRY, Correction Officer, and, under the Supervision of area Sergeant, CLIFF (LAFLIN, Correction Sergeant, here, BESLER, Correction Officer, without just cause or provocation, standing off the left wall (facing G-Block), directly in front of Magnetometer,

here, where claimant has to walk in this
space, in order, to return to his cell,
BESLER, Correction Officer, undoubtedly,
willfully, and maliciously Kicked claimant.

See Hudson v. McMillian, 503 U.S. 1, 112

S. Ct. 995, 998, 117 L. Ed. 2d 156 (1992);

Whitley v. Albers, 475 U.S. 312, 320-21, 106

S. Ct. 1078 (1986).

5. Rather than help claimant,

BESLER, Correction Officer, with black

boots, inimically Kicked claimant in the

Left Leg Shin, causing pain, swelling,

and bruising, degradation and emotional

distress. Hereupon, the actions OF BESCLER,

Correction Officer, were intentional, unwarranted

with deliberate indifference, contrary to

correctional goals, institutional policy, and

penological justification under the color OF

State law. See Correction Law Section 137

[57]; See also, Official Compilation OF codes,

Rules And Regulation OF the State OF New

York, Title 7 Section 251-1.2 [a]

6. As a result OF the

battery, claimant was in pain and suffering

from the nefarious and malevolent actions

OF BESCLER, Correction Officer. See

Farmer v. Brennan 511 U.S. 825, ---, 114 S. Ct.
1990, 1997, 128 L. Ed. 2d 811 (1994).

7. Claimant is Filing this action
Pro-Se and unfamiliar with the law. Thus,
the United States Supreme Court held that
in Haines v. Kerner, 404 U.S. 519, "A Pro-
Se complaint however in artfully pleaded
must be held to a less stringent standard
than formal pleadings drafted by lawyers.
See also Estelle v. Gamble, 429 U.S. 97;
Federal Exp. Corp. v. Hobweck, 552 U.S.

389

8. Claimant request court to

allow future amendment to claim as pertinent information, facts, statements, among other things, evidence comes available.

9. The particulars of Claimant's damages are as follows:

(a) Pain and Suffering

Claimant lower left leg shin was sore and bruised with swelling for one month.

(b) Mental Anguish

Claimant still suffers from loss of sleep, heightened anxiety, depression, mental and emotional anguish, humiliation, degradation,


and psychologically scarred

10. This Claim is Filed within one (1) year after the claim accrued, as required by law.

11. This action is Filed pursuant to Sections 10 and 11 of the Court of Claims Act.

WHEREFORE, Claimant respectfully Requests judgment against the defendant in the Sum of \$19,000 dollars.

Dated: Stormville, New York
October 7, 2014


DARRELL G. W. 03-B-2443
Claimant, Pro-Se

VERIFICATION

STATE OF NEW YORK)
(COUNTY OF DUTCHESS) SS:

DARRELL GUNN, being duly sworn, deposes
and says:

I am the claimant above named; I have
read the foregoing claim against the State of New York
and know its contents; the same is true to my
knowledge, except as to the matter therein stated
to be alleged on information and belief; and as to
those matters, I believe it to be true.

Respectfully submitted,



DARRELL GUNN 03-B-2443
Claimant, Pro Se

Subscribed and sworn to before me this
7 day of October, 2014.



KEITH J. SPOSATO

NOTARY PUBLIC-STATE OF NEW YORK

No. 01SP024B180

Qualified in Putnam County

My Commission Expires September 19, 2015

Notary Public

3
Facility
2582



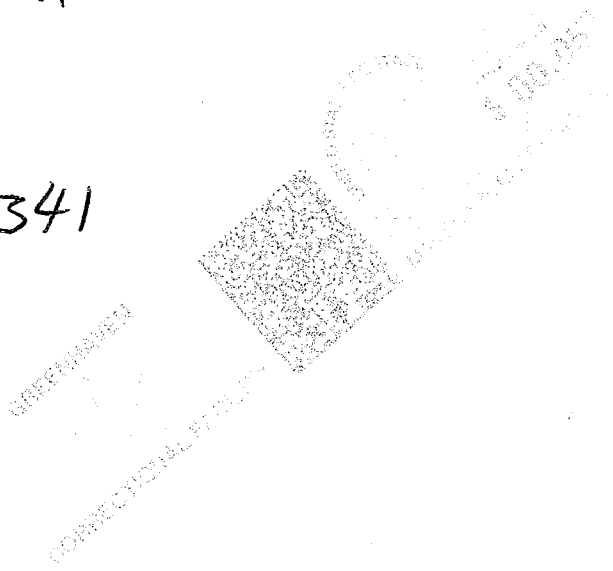
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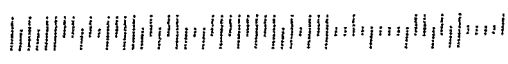
ATTORNEY GENERAL
CLAIMS BUREAU

Attorney General of the State of New York
Office of the Attorney General
Department of Law
State Capitol
Albany, New York 12224-0341

ms)

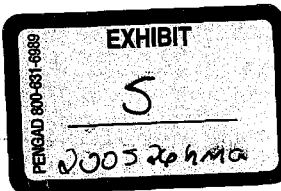


LEGAL MAIL



DARRELL GUNN 03-B-2443 Green Haven Correctional Facility

EXHIBIT 9



ATTACHMENT "B"

Replacement Page Added 7/19/2010

No. 4065, Reporting Injuries and Occupational Illnesses

DATE 3/16/2010 Page 7 of 17

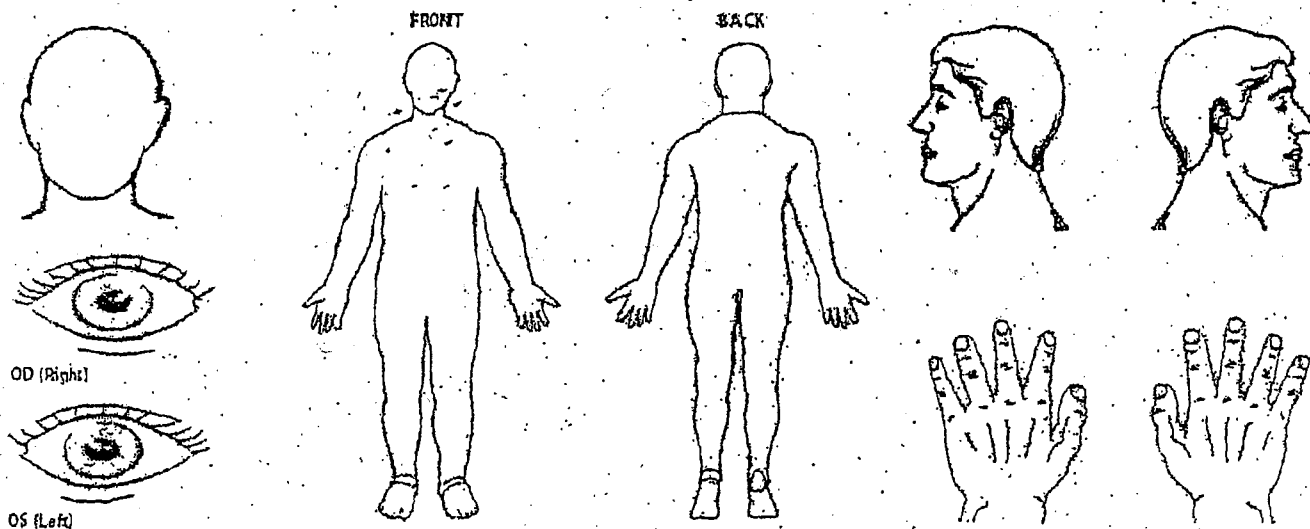
FORM 1595 (07/10)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

INMATE INJURY REPORT

Facility <u>Elmira</u>	Date of injury <u>3/29/13</u>	Time of injury	Location injury occurred
Inmate Name <u>Darrell</u>	DIN <u>0382443</u>	Housing location <u>3-5-20</u>	
What was cause of inmate's injury? <u>Claims to have been sexually assaulted by friend</u> <u>3/29/13 on way to cell</u>			
Inmate's statement: <u>I feel pain in my genital area, swelling, discomfort throbbing from being</u> <u>sexually assaulted by C.O. Perty. I am experiencing emotional distress</u> <u>and depression and stress. I was (wounded) 3/31/13</u> <u>violently touch, rubbed and grabbed he tried to penetrate my rectum</u> <u>with his fingers through my clothes.</u>			
Reporting Employee <u>Elizabeth Pierce</u>	Title <u>RN II</u>		

FACILITY HEALTH SERVICE REPORT	
Date injury reported: <u>3/31/13</u>	Time AM/PM <u>800</u>
Description of injury: <u>None noted. Claims to have</u> <u>injury to genital area + rectum. placed complaint in</u> <u>secret cell box. did NOT NOTIFY medical personnel of</u> <u>any injury + did NOT NOTIFY security of any issues.</u>	




Date of medical examination:	Time:			
Services Provided: <u>Examination of Genital + Rectal area Completed NO</u> <u>Redness NO Blushing NO bumps or bumps NO Bleeding</u> <u>Swollen 1 PCE DFT - Rectal area dry Apply ice to area Tylenol</u>				
Was inmate admitted to facility infirmary?	Outside hospital?	If yes, where?	PLP on file (yes/no)?	Released evaluation?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name and title of person furnishing treatment at facility: <u>Elizabeth Pierce RN II</u>				
Print		Title		

EXHIBIT 10

PLAINTIFF'S MEDICAL RECORDS
FILED UNDER SEAL

EXHIBIT 11

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p>	Grievance Number EL-42163-14	Desig./Code I/49	Date Filed 2/4/14
	Associated Cases		
	Facility Elmira Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Title of Grievance Harassed/Threatened/Legal Work Read		

7/30/14

GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

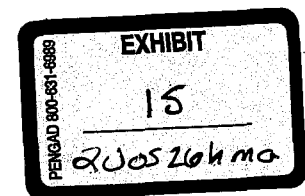
CORC notes that the facility administration has conducted a proper investigation, and that CO S... denies the grievant's allegations from 1/10/14, 1/31/14 and 2/3/14. Further, CORC notes that the grievant's allegations of sexual assault and harassment were appropriately referred to IG SCU for investigation in accordance with the Department's PREA policy. Contrary to the grievant's assertions, CORC has not been presented with sufficient evidence to substantiate any malfeasance by staff.

CORC asserts that there is no provision to separate staff from the grievant. CORC notes that he may write to whomever he wishes regarding this complaint, as long as they are not on his Negative Correspondence and Telephone List. CORC advises him to address medical concerns through sick call and mental health concerns to OMH staff.

CORC notes that Directive #4040, Section 701.1, states, in part, that the grievance program is not intended to support an adversary process and Section 701.6 (b) states, in part, that no reprisals of any kind shall be taken against an inmate or employee for good faith utilization of this grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism.

With respect to the grievant's appeal, CORC notes that it is the responsibility of the grievant to contact an advisor and he must be willing to accept the role of an advisor. Further, CORC advises him that local policy and directives are available to be reviewed in the facility law library.

JAD/tll/amb



CASE HISTORY AND RECORDS
ELMIRA CORRECTIONAL FACILITY

Grievance No.: EL-42-163-14 ✓
Name: 03-B-2443 GUNN, D.
Title: HARASSED/THREATENED/LEGAL WORK READ
Code: 49.0
Designation: INSTITUTIONAL
Date Filed: 2/4/2014
IGRC Date: APR 22 2014
Supt. Date: 2/24/2014
Appeal Date: 4/18/2014
Investigation: _____
IGRC Invest. Date: _____
Facility Policy No.: _____
Capt. Date: DSS 2-19-14
Supv. Date: SGT. 2-8-14
Employee Info: CO 2-8-14
Other: _____
Prior CORC No.: _____
Office Of Diversity Mgt.: _____
IGP Supervisor's Signature: B. Amey

NYS DEPT OF
CORRECTIONS AND
COMMUNITY SUPERVISION

RECEIVED
INMATE GRIEVANCE

**CASE HISTORY AND RECORDS
ELMIRA CORRECTIONAL FACILITY**

Grievant's DIN and Name: **03-B-2443 GUNN, D.**
Grievance No.: **EL-42-163-14**
Title: **HARASSED/THREATENED/LEGAL WORK READ**
Code: **49.0**
Date Filed: **2/4/2014**

Grievance:

Grievance was filed on 2/4/14, wherein grievant has cited C.O. Schieber with sexual and verbal harassment, with verbal threats and reading grievant's legal mail without prior written approval by Superintendent. Grievant asserts that while he was asleep in his cell, C.O. Schieber approached his cell and used his "BATON" in an attempt to awake him. Once awakened, grievant states that C.O. Schieber used sexual explicit language towards his person, referring to him as "Cinnamon" while blowing kisses at grievant in a homosexual suggestive manner. Grievant cites another occasion in which he was sexually assaulted by C.O. Schieber, during as "Pat frisk", wherein grievant asserts that C.O. Schieber used his hand in an unprofessional manner, by forcing his finger into grievant's rectum, causing grievant to experience a bowel movement. Grievant further asserts that he is being tormented, humiliated, antagonized, degraded, provoked, taunted, stalked and targeted with sexual and verbal harassment by C.O. Schieber, and that he is in constant fear for his life, that he is experiencing episodes of depression and emotional distress, which is causing him a range of physical ailments such as stomach pains, loss of hair and headaches.

Action Requested:

Disciplinary action be taken against C.O. Schieber, for sexual and verbal harassment, for using sexual explicit language and homosexual suggestion towards grievant, while placing grievant in a constant state of fear. Grievant further states that he is requesting that NYS Police Agency be contacted and informed that he grievant wants to formally file criminal charges against C.O. Schieber, for before mentioned actions against his person.

IGRC Recommendation:

N/A per Directive 4040, P/T to Supt. for review and response.

Supt. Response:

GRIEVANT CLAIMS ALLEGATIONS OF HARASSMENT, THREATS AND LEGAL MAIL ISSUES BY STAFF.

CO S...DENIES THESE ALLEGATIONS.

INTERVIEWS WERE CONDUCTED AND WRITTEN STATEMENTS WERE SOLICITED AND ATTACHED.

IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED

BEHAVIOR OCCURRED.

GRIEVANCE IS DENIED.

Appeal:

Grievant is appealing the determination rendered by the Superintendent.

#28

FORM 2131E (REV. 8/06)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

INMATE GRIEVANCE COMPLAINT

(49)

HARASSED/THREATENED/READ LEGAL WORK

Grievance No.

EL42163-14

ELMIRA

CORRECTIONAL FACILITY

Date 2/4/14

Name DARNELL GUNN

Dept. No. 03-B2443

Housing Unit C-1-5

Program

AM

PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible)

On 2/3/14, approximately 8:30 p.m. C.O. Schieber, stopped at my cell and used his baton on my foot to wake me up. Hereupon, C.O. Schieber stated: "Hey 'Cinnamon', why didn't you come out today? When you come out your cell, I'm going to fuck you up! You little bitch!" Then shortly after C.O. Schieber threw a cup of water on me while I'm laying down in

Grievant
Signature

Darnell D

Continued on
Separate Paper

Grievance Clerk

Date:

Advisor Requested

☒ YES☐ NO

Who:

IGRC Representative

Action requested by inmate:

Disciplinary action for C.O. Schieber; I.G. investigation; Free From Cruel and Unusual punishment; Invoke my prisoner's rights; NO contact with C.O. Schieber; I would like to file criminal charges against C.O. Schieber with New York State Police agency.

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

* An exception to the time limit may be requested under Directive #4040, section 701.6(g).

000005

in my cell.

Heretofore, on 1/31/14, approx. 5 p.m. C.O. Schieber came to my cell and made sexual advances towards me i.e. blowing kisses to me; calling me "Cinnamon", hereafter, approximately 8 p.m. C.O. Schieber, again, came to my cell stating: "Cinnamon, why didn't you come out tonight, I'll see you tomorrow." Also, telling the C.O. in officer's station "He's playing like he's Sleep."

Heretofore, on 1/10/14 C.O. Schieber began reading my legal papers without permission from Superintendent, causing me fear to prepare and file any legal papers and/or grievances.

Heretofore, on July 26, 2013, approximately 3:30 p.m. at Baltfield entrance, C.O. Schieber sexually assaulted me during a pat frisk, trying to penetrate my rectum with his hand, and, in so doing, caused me to have a bowel movement. Thereafter, C.O. Schieber wrote a false misbehavior report against me because I reported the sexual assault.

As that is the case, C.O. Schieber is tormenting, humiliating, antagonizing, degrading, pro-


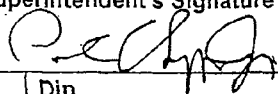
DARRELL GUNN 03-B-2443 2/4/14 C-1-5 Grievance Complaint Continuation page 3

voking, taunting, stalking, and targeting me for sexual abuse and physical assault, etc., in which, his incorrigible behavior is causing me fear, anxiety, emotional distress, stomach pains, headaches, loss of hair, stress, depression, among other things, I risk being subjected to serious harm.

Struggling,



DARRELL GUNN 03-B-2443

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES INMATE GRIEVANCE PROGRAM SUPERINTENDENT	Grievance No. EL42-163-14	Date Filed 2/4/14
	Facility ELMIRA CORRECTIONAL FACILITY	Policy Designation I
	Title of Grievance HARASSED/THREATENED/LEGAL WORK READ	Class Code 49
	Superintendent's Signature 	Date 2/24/14
	Grievant GUNN, D	Din 03B2443

GRIEVANT CLAIMS ALLEGATIONS OF HARASSMENT, THREATS AND LEGAL MAIL ISSUES BY STAFF.

CO S... DENIES THESE ALLEGATIONS.

INTERVIEWS WERE CONDUCTED AND WRITTEN STATEMENTS WERE SOLICITED AND ATTACHED.

IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED BEHAVIOR OCCURRED.

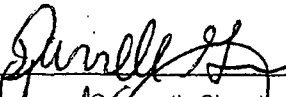
GRIEVANCE IS DENIED.

Received on 4/7/14, From IGRC Office in person.

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal.* Please state why you are appealing this decision to C.O.R.C.

WRITTEN ON SEPARATE
PAPER FOR LACK OF SPACE. Three (3) pages.


 Grievant's Signature


 Grievance Clerk's Signature

4/10/14

Date

4-14-14

Date

* An exception to the time limit may be requested under Directive # 4040, Section 701.6(g).

DARRELL GUNN 03-B-2443
Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902-0500
April 10, 2014

TO: C.O.R.C.

RE: Grievance Number EL-42163-14
HARASSED / THREATENED / LEGAL WORK READ
Appeal Statement

Dear C.O.R.C.:

It is imperative the C.O.R.C. Administration postulate my empirical grievance to address the sexual abuse, sexual harassment, among other things, cruel and unusual punishment, oppression, degradation, tormenting, unwarranted, humiliation, and retaliation I'm experiencing.

the grievance complaint, appeal Statement to
Superintendent Paul Chappius, Jr., and above,
I pray that that C.O.R.C. grant this grievance
in full and invoke my prisoner's rights because
the Superintendent's decision is arbitrary
and capricious.

Struggling,

Darrell G
DARBELL GUNN 03B0415

#28

FORM 2131E (REV. 6/06)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

INMATE GRIEVANCE COMPLAINT

(49)

HARASSED/THREATENED/READ LEGAL WORK

Grievance No.

EL42163-14

ELMIRA

CORRECTIONAL FACILITY

Date 2/4/14

Name DARBELL GUNN

Dept. No. 03-B-2443

Housing Unit C-1-5

Program

AM

PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible)

On 2/3/14, approximately 8:30 p.m. C.O. Schieber, stopped at my cell and used his baton on my foot to wake me up. Hereupon, C.O. Schieber stated: "Hey 'Cinnamon', why didn't you come out today? When you come out your cell, I'm going to fuck you up! You little bitch!" Then shortly after C.O. Schieber threw a cup of water on me while I'm laying down in

Grievant
Signature

Darnell D

Continued on
Separate Paper

Grievance Clerk

Date:

Advisor Requested



YES



NO

Who:

IGRC Representative

Action requested by inmate:

Disciplinary action for C.O. Schieber; I.G. investigation; Free From Cruel and Unusual punishment; Invoke my prisoner's rights; NO contact with C.O. Schieber; I would like to file criminal charges against C.O. Schieber with New York State Police agency.

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant

Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

000013

in my cell.

Heretofore, on 1/31/14, approx. 5 p.m. C.O. Schieber came to my cell and made sexual advances towards me i.e. blowing kisses to me; calling me "Cinnamon", hereafter, approximately 8 p.m. C.O. Schieber, again, came to my cell stating: "Cinnamon, why didn't you come out tonight, I'll see you tomorrow." Also, telling ~~the~~ C.O. in officer's station "He's playing like he's Sleep."

Heretofore, on 1/10/14 C.O. Schieber began reading my legal papers without permission from Superintendent, causing me fear to prepare and file any legal papers and/or grievances.

Heretofore, on July 26, 2013, approximately 3:30 p.m. at Ballfield entrance, C.O. Schieber sexually assaulted me during a pat frisk, trying to penetrate my rectum with his hand, and, in so doing, caused me to have a bowel movement. Thereafter, C.O. Schieber wrote a false misbehavior report against me because I reported the sexual assault.

As that is the case, C.O. Schieber is tormenting, humiliating, antagonizing, degrading, pro-

JARRELL GUNN 03-B-2443 2/4/14 C-1-5 Grievance Complaint Continuation page 3

voking, taunting, stalking, and targeting me for sexual abuse and physical assault, etc., in which, his incorrigible behavior is causing me fear, anxiety, emotional distress, stomach pains, headaches, loss of hair, stress, depression, among other things, I risk being subjected to serious harm.

Struggling,

Jarrell Gunn

JARRELL GUNN 03-B-2443

(2)

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
ELMIRA CORRECTIONAL FACILITY

OFFICE OF
DEPUTY SUPERINTENDENT FOR SECURITY

Memorandum

TO: Paul Chappius, Jr., Superintendent
FROM: Paul Piccolo, DSS
DATE: February 19, 2014
SUBJECT: GRIEVANCE EL 42-163-14
Inmate Gunn, Darrell (03B2443)

Supt. Chappius,

I have completed my review of the investigation into the above referenced matter and am prepared to respond with the following:

On 02/08/14, Sgt. Clark interviewed the grievant at his cell on C Block flats regarding his allegations of harassment, threats, and legal mail issues by CO Schieber. Grievant reiterated his claims. Grievant had no witnesses and nothing further to add. It should be noted that the allegations of sexual assault are untimely for the grievance process. However they were previously investigated by the DSS on 8/20/13. CO Schieber was interviewed and has provided written statement denying the allegations.

Based on the investigation, I find that the information reported and supporting documentation to this matter is appropriate and no evidence is present to suggest staff malfeasance.



Paul Piccolo
Deputy Superintendent for Security Services

PTP:lmw
Attachment
cc: Inmate File Gunn, Darrell (03B2443)

RECEIVED

FEB 20 2014

ELMIRA CORR. & REC. CTR.
SUPERINTENDENT'S OFFICE

New York State - Department of Correctional Services
Elmira Correctional Facility
Memorandum

To: SGT CLARK
From: CO. B. SCHIEBER
RE: GUNN D. 03 B-2443 C-1-S
Date: 2-8-14

SIR,

ON 2-3-14 AT 8:30 PM I WAS LOCKED IN THE GYM
GAS BOOTY AND UNABLE TO HAVE ANY CONTACT WITH THIS INMATE,

ON 1-31-14 I HAD NO INTERACTION WITH THIS INMATE,
NOR DID I BLOW KISSES AT THIS INMATE OR CALL HIM BY THE
NAME OF "CINNAMON".

ON 1-10-14 I WAS IN THE GYM GAS BOOTY DURING THE
FRISK AND UNABLE TO READ THIS INMATES LEGAL WORK.

ANY AND ALL ACUTUAL CONTACT I HAVE HAD WITH THIS INMATE
HAS BEEN PROFESSIONAL AND NOT SEXUAL IN NATURE.

RESPECTFULLY SUBMITTED

CO. B. SCHIEBER



STATE OF NEW YORK
**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**

Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902
807-734-3901

**INMATE GRIEVANCE PROGRAM
PREA GRIEVANCE**

TO: WATCH COMMANDER/DEPUTY SUPERINTENDENT SECURITY

FROM: B. ABRUNZO, IGPS

DATE: 7/21/14

GRIEVANCE # EL-42163-14

PURSUANT TO DIRECTIVE 4027A/4028A, SEXUAL ABUSE PREVENTION AND INTERVENTION STAFF ON INMATE, SECTION V-B-2: ANY EMPLOYEE WHO RECIEVES A REPORT OF SEXUAL ABUSE, SEXUAL THREATS, OR STAFF VOYEURISM SHALL IMMEDIATELY NOTIFY THE WATCH COMMANDER.

NAME: GUNN, D.

DIN: 03B2443

LOCATION: C1-5

HAS FILED THE ATTACHED SEXUAL ABUSE/SEXUAL THREATS/STAFF VOYEURISM GRIEVANCE WITH THE INMATE GRIEVANCE PROGRAM. AN INVESTIGATION AND RESPONSE IS REQUIRED WITHIN (12) TWELVE WORKING DAYS FROM THE DATE THIS GRIEVANCE WAS FILED. PLEASE ADDRESS THE GRIEVANT'S ALLEGATIONS AND SUPPLY ALL SUPPORTING DOCUMENTATION. THE EMPLOYEE(S) WHOM THE THIS GRIEVANCE IS AGAINST SHALL SUPPLY WRITTEN DOCUMENTATION TO THE WATCH COMMANDER'S OFFICE.

Dennis, Julie A (DOCCS)

From: Donnelly, Lynnell C (DOCCS)
Sent: Monday, July 21, 2014 4:02 PM
To: Dennis, Julie A (DOCCS)
Cc: Abrunzo, William J (DOCCS ONLY); Piccolo, Paul T (DOCCS)
Subject: GUNN, DARRELL 03B2443

Per your request, please find the PREA log numbers with reference to the above.

Gunn, Darrell 03B2443	EL42-163-14	<u>PREA# 2014-12</u>	DOI: 2/4/14	Verbal Harassment
Gunn, Darrell 03B2443	EL42-205-14	<u>PREA# 2014-13</u>	DOI: 2/10/14	Discriminating Slurs/Actions

Thank you.

Lynnell Donnelly, Secretary 1
Elmira Correctional Facility
lynnell.donnelly@doccs.ny.gov
607-734-3901 ext. 5020



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

MEMORANDUM

TO: Inspector General's Office

FROM: Karen Bellamy, Director, Inmate Grievance Program *KB*

DATE: July 30, 2014

SUBJ: CORC Decision: EL-42163-14


The attached decision is forwarded to you for information.

CORC notes that the grievant, D. Gunn, #03-B-2443, has filed a grievance alleging sexual assault by Officer Schieber that was documented in the PREA log under #2014-12 and referred to your office. A copy of this grievance is being forwarded for whatever action is deemed appropriate.

KRB/tll
Attachment

cc: Grievance File - EL-42163-14
Paul Chappius, Superintendent, Elmira Correctional Facility
Bill Abrunzo, IGP Supervisor, Elmira Correctional Facility

EXHIBIT 12

 Corrections and Community Supervision ANDREW M. CUOMO Governor ANTHONY J. ANNUCCI Acting Commissioner	Grievance Number GH-80561-15	Desig./Code I/49	Date Filed 8/25/15
	Associated Cases		Hearing Date 1/13/16
	Facility Green Haven Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE		Title of Grievance False MBR	

GRIEVANT'S REQUEST UNANIMOUSLY DENIED

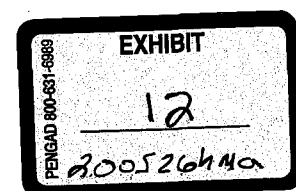
Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied. CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the grievant's allegations of being issued a false misbehavior report in July 2013 at Elmira CF are untimely and will not be addressed. CORC asserts that disciplinary dispositions are considered non-grievable in accordance with Directive #4040, § 701.3 (e) (1) because they have their own appeal mechanism which extends beyond the facility level. Accordingly, CORC assumes no jurisdiction in this issue.

CORC notes that Directive #4040, § 701.1, states, in part, that the grievance program is not intended to support an adversary process.

In regard to the grievant's appeal, CORC asserts that the instant complaint was properly investigated and finds insufficient evidence of malfeasance by staff.

RAS/



GREEN HAVEN CORRECTIONAL FACILITY
CASE HISTORY & RECORD

NYS DEPT OF
CORRECTIONS AND
COMMUNITY SUPERVISION

NOV 19 2015

RECEIVED
INMATE GRIEVANCE

GRIEVANCE NUMBER:

GH
80561-15

NAME:

GUNN, D

DIN:

03B2443

TITLE:

False MBR

GH CODE :

49

INSTITUTIONAL / DEPARTMENTAL

I

DATE FILED:

8-25-15

HEARING DATE:

PT 8/25/15

SUPT. DATE:

10-22-15

APPEAL DATE:

10-30-15

INVESTIGATIVE INFORMATION

IGRC INVESTIGATION DATE:

FACILITY POLICY #

CAPTION DATE:

SUPERVISOR DATE:

EMPLOYEE DATE:

PRIOR CORC:

OTHER:

IGP SUPERVISOR'S SIGNATURE:

Stanaway

DATE:

11/14/15
000002

GREEN HAVEN CORRECTIONAL FACILITY

GRIEVANCE NUMBER. GH-80561-15

NAME:False MBR

DIN #:03B2443

TITLE:False MBR

Code:49

DESCRIPTION OF PROBLEM:

DATE. 8-25-15 The grievant complains of a false misbehavior report being written..

ACTION REQUESTED:

Grievant request not to receive MBR.

IGRC RECOMMENDATION:

DATE. PT

SUPERINTENDENT RESPONSE:

DATE. 10-30-15 According to the investigation the grievant was interviewed by Lt. M, The grievant stated that the grievance is about MBR received while housed at Elmira Correctional facility authorized by CO S in July 2013.

According to directive #4040 this grievance is considered untimely filed as it relates to an incident that the grievant alleges occurred two years ago. Dir 4040 time limit for filing a grievance.

Grievance is denied to the extent noted above.

APPEAL TO CORC:

DATE. 10-30-15. Grievant is appealing the Superintendent's decision because he disagrees with the decision.

(49) False MBR

DARRELL GUNN 03-B-2443
Green Haven Correctional Facility
Cell E-2-240
August 18, 2015

80561-15

AUG 25 2015

INMATE GRIEVANCE RESOLUTION COMMITTEE
(I. G. R. C.)

Re: Grievance Complaint -- UNLAWFUL CONFINEMENT

Dear I. G. R. C. :

I have experienced unlawful Cell
Confinement from July 26, 2013 to August 25, 2013.
with deliberate indifference as the result of
written false misbehavior report authored by B.
SCHIEBER, correction officer.

Consequently, I'm suffering from
undue hardships, among other things. Contrary
to legitimate penological justification and

80561-15

DARRELL GUNN 03B2443 8/18/15 Cell E-2-240 Grievance Complaint Continuation

Page 2
AUG 25 2015

correctional goals and institutional policy combined.

Still pending is Matter of GUNN V.
ANNUCCI, Appellate Division Docket NO. 519047,
Albany County Index No. 6912-13



ACTION REQUESTED: Disciplinary action for
B. SCHIEBER, Correction Officer;
Corrective action and/or remedy
the wrong for undue hardship
and UNLAWFUL CELL CONFINEMENT.

ADVISOR REQUESTED: YES IGRC Representative

Struggling,

Darrell Gunn

DARRELL GUNN 03B-2443

 NEW YORK STATE Corrections and Community Supervision Inmate Grievance Program	Grievance Number 80561-15	Date Filed 8/25/2015
	Title FALSE MBR	Code 49
	Superintendent's Signature 	Date 10-22-15

The grievant complains of a false misbehavior report being written.

According to the investigation the grievant was interviewed by Lt. M. The grievant stated that the grievance is about a misbehavior report he received while housed at Elmira Correctional Facility authored by CO S in July 2013.

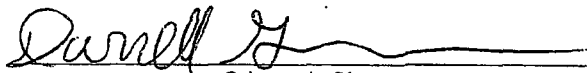
According to Directive #4040 this grievance is considered untimely filed as it relates to an incident that the grievant alleges occurred two years ago. Directive #4040 (701.5) (a) (1) Time Limit for Filing: An inmate must submit a complaint to the clerk within twenty-one (21) calendar days of an alleged occurrence.

*** Grievance is denied.

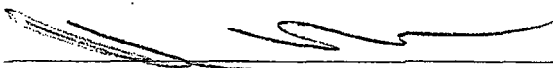
Appeal Statement

If you wish to refer the above decision of the Superintendent please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. Please state why you are appealing this decision to C.O.R.C.

WRITTEN ON THREE (3) separate paper For lack of
Space.


 Grievant's Signature

October 30, 2015
 Date


 Grievance Clerk's Signature

11/2/15
 Date

DARRELL GUNN 03-B-2443
Cell E-2-240
October 30, 2015

CENTRAL OFFICE REVIEW COMMITTEE

Re: Appeal Statement
Grievance Number GH-80561-15

Dear CORC:

By this letter, for the above referenced and attached form # 2133 I'm appealing Supt. Griffin decision with the following statement below:

Supt. Griffin decision is inane, arbitrary and capricious. Moreover, self-evident truth the grievance complaint is solely

UNLAWFUL CONFINEMENT albeit, improperly titled "false MBR" an attempt to cover-up the incorrigible C.O. SCHIEBER whom acted willfully and maliciously and that malice is the gist of this grievance complaint.

More than this, I received an unfair, untimely and partial investigation. In so doing, Lt. M stated: "the record is expunged; the ticket was dismissed." I said correct. The court matter is still pending. In response, Lt. M stated: "I will write the misbehavior report is dismissed and expunged from the record as my investigation."

I conclude, I never received an advisor. Thus, Lt. M is untruthful. The court matter is still pending. Supt. decision is without merit. Prison guards and prison officials alike are corrupted with an 'brotherhood' that investigate themselves

DARRELL GUNN 03-B-2443 10/30/15 CORC Appeal Statement G# 90561-15 Page 3

causing tremendous injustice. This disadvantage calls for CORC to invoke my prisoner and constitutional rights and grant this grievance in full.

Struggling,

Darrell L

DARRELL GUNN 03-B-2443



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

To: IGP Supervisor

From: Lt S Murphy

Subject: GH# 80561-15

Date: 10/3/15

I have investigated the above numbered grievance written by inmate Gunn 03b2443 concerning false misbehavior report. I interviewed inmate Gunn on 10/3/15 at which time he stated that the grievance concerned a misbehavior report he received while at Elmira CF which was authored by a CO Schieber in July of 2013. I checked the inmate's disciplinary history and there is no indication of a misbehavior report written by that officer in that time frame.



Lt S Murphy

12:43:10 Monday, January 11, 2016

01/11/16 CIGRRAS
12:43:03 CINSN021

DISCIPLINARY SYSTEM
990 CENTRAL OFFICE
DISCIPLINARY INCIDENT SUMMARY

KDCPM40
PAGE 1
MANUAL RECS N

DIN: 03B2443 NYSID: 06665381K NAME: GUNN, DARRELL
CURRENT FACILITY: 080 GRN HAVN GEN CURRENT HOUSING LOCATION: 0E-22-40S

TIER 3 INCIDENT: 06/18/14 09:15 AM CO N.LAFATA GRN HAVN GEN
HEARING : 08/13/14 01:11 PM SORC D.MERRIETT GRN HAVN GEN
APPEAL : 10/17/14 AFFIRMED DIR PRACK CENTRAL OFF
DIS.REV : 08/22/14 SHMC REVIEW GRN HAVN GEN

113.10 WEAPON 113.11 ALTERED ITEM 114.10 SMUGGLING
2M 14D SHU SERVICE DTES 06/18/14 09/01/14
2M 14D PACKAGE SERVICE DTES 06/18/14 09/01/14
2M 14D COMMISSARY SERVICE DTES 06/18/14 09/01/14
2M 14D PHONE SERVICE DTES 06/18/14 09/01/14
3M SHU PACKAGE COMMISSARY PHONE SUSPD TO 02/09/15

NEXT DIN:

<CURSOR + ENTER> INC DETAIL
<ENTER> <PF3> EXIT(FUNCT) <PF7> BACKWARD <CLEAR> EXIT(SYSTEM)

11/16 - Per SHU Panel Dispute (Dep)

no record in computer of them recently or for 2 years

on MBL from 7/2/13

(2)

12:43:19 Monday, January 11, 2016

01/11/16 CIGRRAS
12:43:13 CINSN021

DISCIPLINARY SYSTEM
990 CENTRAL OFFICE
DISCIPLINARY INCIDENT SUMMARY

KDCPM40
PAGE 2
MANUAL RECS N

DIN: 03B2443 NYSID: 06665381K NAME: GUNN, DARRELL
CURRENT FACILITY: 080 GRN HAVN GEN CURRENT HOUSING LOCATION: 0E-22-40S

TIER 2 INCIDENT: 04/06/12 09:00 AM CO SCHOONOVER ELMIRA GENER
HEARING : 04/12/12 09:35 AM LT MORIARTY ELMIRA GENER
APPEAL : 04/18/12 AFFIRMED CAPT DIEGO ELMIRA GENER
106.10 DIRECT ORDER 109.15 REFUSE DEL CELLNG
30D KEEPLOCK COMMISSARY PHONE SERVICE DTES 04/06/12 05/06/12

TIER 3 INCIDENT: 03/17/10 09:30 AM CO D. TRUDEAU CLINTON GEN
HEARING : 04/01/10 10:45 AM CAPT J FACTEAU CLINTON GEN
APPEAL : 06/09/10 AFFIRMED ADIR VENETTOZZI CENTRAL OFF
113.23 CONTRABAND 114.10 SMUGGLING
60D SHU PACKAGE COMMISSARY SERVICE DTES 03/17/10 05/16/10
60D PHONE SERVICE DTES 03/17/10 05/16/10

NEXT DIN:

<CURSOR + ENTER> INC DETAIL
<ENTER> <PF3> EXIT(FUNCT) <PF7> BACKWARD <CLEAR> EXIT(SYSTEM)

000012

INMATE GRIEVANCE COMPLAINT

AUG 25 2015

(49) False MBR

Grievance No.
80561

Name G. HAVEN CORRECTIONAL FACILITY _____
Date 8/25/15
Name GUNN Dept. No. 0362443 Housing Unit E2-240
Program _____ AM _____ PI _____

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident) *

Description of Problem: (Please make as brief as possible)

SJA

Grievant
Signature _____

Grievance Clerk _____

Date: _____

Advisor Requested

☐

YES

☐

NO

Who: _____

Action requested by inmate: _____

This Grievance has been informally resolved as follows: _____

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature _____

Date: _____

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC). 000013
The time limit may be requested under Directive #4040, section 701.6(a).

INMATE GRIEVANCE RESOLUTION COMMITTEE
ACKNOWLEDGEMENT OF RECEIPT

TO: GANN DIN 03B2443 LOC. E2-240

FROM: IGRC OFFICE: Incident date: 7/26 Action Request: _____ Signature: _____

CODE 49 TITLE: False MBR

This notice is to inform you that your grievance has been received by this office on

8/19. It has been given the log number GH 80561-15.

Your log number, DIN, and cell location must be included on any inquiry made concerning your grievance.

Upon completion of an investigation into your grievance, you will be scheduled for an IGRC hearing. According to Directive #4040 if you do not appeal for the hearing without a legitimate reason, the IGRC will hold a hearing in absentia.

If your grievance is numbered as part of a consolidated issue, you may or may not be called for a hearing. However, you will receive a copy of the grievance committee's decision, and you may appeal any decision in accordance with Directive #4040.

Directive #4040 701.3(a) Inmate's Responsibility. An inmate is encouraged to resolve his complaints through the guidance and counseling unit the program area directly affected, or other existing channels (informal or formal) prior to submitting a grievance. Although a facility may not impose pre-conditions for submission of a grievance, the failure of an inmate to attempt to resolve a problem on his own may result in the dismissal and closing of a grievance at an IGRC hearing.

*Notice of Return: **Please resubmit with correction requested.**

AUG 25 2015

Please be advised that your grievance received on _____, is being returned to you via callout for one or more of the following reasons. You will be placed on a callout to meet with an IGRC Inmate Representative to make any necessary corrections.

___ No action request, please indicate one.

___ No incident date noted.

___ No signature

___ Non-grievable per Directive #4040

___ Unable to understand handwriting.

___ Other (as indicated below):

IGP Supervisor Stanaway _____



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

MEMORANDUM

TO: Superintendent Griffin

FROM: L. Stanaway, IGP Supervisor


SUBJECT: Initial Superintendent Review of Grievance Coded 49 – Staff Misconduct

DATE: 8/28/15

Grievant's Name: GILNN DIN 0332443 Loc E2-240

GRIEVANCE NUMBER: GH 80561-15

Attached is a grievance that has been coded as a 49 – Staff Misconduct. Please review within 24 hours, and note your findings:

Superintendent Initial: 

Date Reviewed: _____

✓

I concur with the filing of this grievance as being coded 49.
An investigation by _____ can proceed.

_____ I DO NOT concur with the filing of this grievance as being coded 49.
The following action should be taken:

_____ This incident has been previously or is currently being investigated
By _____

Please return the attached to the IGP Supervisor.

Thank you.

EXHIBIT 13

INMATE ID#: 03B2443 GUNN, DARRELL

LOCATION: 0B-WS-22S

TIER 2 INCIDENT: 01/17/19 11:04 AM NURS SOLTISH, C GRN HAVN GEN
 HEARING : 01/28/19 04:16 PM LT VANACORE, T A GRN HAVN GEN
 107.11 HARASSMENT
 10 D RECREATION PACKAGE COMMISSARY SERVICE DTES 01/28/19 02/07/19
 10 D PHONE SERVICE DTES 01/28/19 02/07/19

TIER 2 INCIDENT: 07/09/18 05:45 PM CO HENNIG, J A GRN HAVN GEN
 HEARING : 08/12/18 10:10 AM LT LEIFELD, B J GRN HAVN GEN
 107.10 INTERFERENCE 106.10 DIRECT ORDER
 15 D KEELOCK PACKAGE COMMISSARY SERVICE DTES 08/12/18 08/27/18
 15 D PHONE SERVICE DTES 08/12/18 08/27/18

TIER 2 INCIDENT: 05/29/18 12:25 PM CO LUCCHESI, M C GRN HAVN GEN
 HEARING : 06/10/18 11:51 AM LT MURPHY, S J GRN HAVN GEN
 124.16 MESSHALL VIOL
 COUNSEL /

TIER 3 INCIDENT: 06/18/14 09:15 AM CO N.LAFATA GRN HAVN GEN
 HEARING : 08/13/14 01:11 PM SORC D.MERRIETT GRN HAVN GEN
 APPEAL : 10/17/14 AFFIRMED DIR PRACK CENTRAL OFF
 DIS.REV : 08/22/14 SHMC REVIEW GRN HAVN GEN
 113.10 WEAPON 113.11 ALTERED ITEM 114.10 SMUGGLING
 2 M 14 D SHU SERVICE DTES 06/18/14 09/01/14
 2 M 14 D PACKAGE SERVICE DTES 06/18/14 09/01/14
 2 M 14 D COMMISSARY SERVICE DTES 06/18/14 09/01/14
 2 M 14 D PHONE SERVICE DTES 06/18/14 09/01/14
 3 M SHU PACKAGE COMMISSARY PHONE SUSPD TO 02/09/15

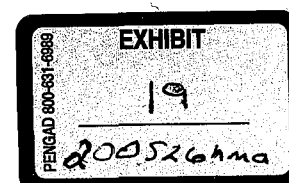
TIER 2 INCIDENT: 04/06/12 09:00 AM CO SCHOONOVER ELMIRA GENER
 HEARING : 04/12/12 09:35 AM LT MORIARTY ELMIRA GENER
 APPEAL : 04/18/12 AFFIRMED CAPT DIEGO ELMIRA GENER
 106.10 DIRECT ORDER 109.15 REFUSE DBL CELLNG
 30 D KEELOCK COMMISSARY PHONE SERVICE DTES 04/06/12 05/06/12

TIER 3 INCIDENT: 03/17/10 09:30 AM CO D. TRUDEAU CLINTON GEN
 HEARING : 04/01/10 10:45 AM CAPT J FACTEAU CLINTON GEN
 APPEAL : 06/09/10 AFFIRMED ADIR VENETTOZZI CENTRAL OFF
 113.23 CONTRABAND 114.10 SMUGGLING
 60 D SHU PACKAGE COMMISSARY SERVICE DTES 03/17/10 05/16/10
 60 D PHONE SERVICE DTES 03/17/10 05/16/10

TIER 3 INCIDENT: 03/15/10 12:50 PM CO S. MANOR CLINTON GEN
 HEARING : 04/05/10 10:25 AM CAPT J FACTEAU CLINTON GEN
 APPEAL : 06/08/10 AFFIRMED ADIR PRACK CENTRAL OFF
 DIS.REV : 10/21/10 DSP DRC UPSTATE SC
 100.11 ASSAULT ON STAFF 107.10 INTERFERENCE 106.10 DIRECT ORDER
 8 M 8 D SHU PACKAGE COMMISSARY SERVICE DTES 05/16/10 01/24/11
 8 M 8 D PHONE SERVICE DTES 05/16/10 01/24/11
 12 M GOOD TIME

TIER 3 INCIDENT: 12/17/09 09:25 AM CO K. STRADER CLINTON GEN
 HEARING : 12/23/09 07:45 AM CHO C DROWN CLINTON GEN
 APPEAL : 02/08/10 AFFIRMED DIR BEZIO CENTRAL OFF
 DIS.REV : 03/08/10 DSS CRC CLINTON GEN
 104.11 VIOLENT CONDUCT 104.13 CREATE DISTURB 100.13 FIGHTING
 106.10 DIRECT ORDER
 2 M 21 D SHU SERVICE DTES 12/17/09 03/10/10

NOTE: ONLY COMPLETED HEARINGS ARE SHOWN



INMATE ID#: 03B2443 GUNN, DARRELL

LOCATION: 0B-WS-22S

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2 M 21 D PACKAGE SERVICE DTES 12/17/09 03/10/10
2 M 21 D COMMISSARY SERVICE DTES 12/17/09 03/10/10
2 M 21 D PHONE SERVICE DTES 12/17/09 03/10/10
2 M 9 D SHU PACKAGE COMMISSARY PHONE SUSPD TO 04/22/10
3 M GOOD TIME
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TIER 2 INCIDENT: 03/12/09 09:15 AM CO M. MILLER CLINTON GEN
HEARING : 03/16/09 10:05 AM LT R. NAPPER CLINTON GEN
104.11 VIOLENT CONDUCT 104.13 CREATE DISTURB
15 D KEYPLOCK PACKAGE COMMISSARY SERVICE DTES 03/12/09 03/27/09
15 D PHONE SERVICE DTES 03/12/09 03/27/09
REFERRALS /
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TIER 2 INCIDENT: 11/15/07 03:00 PM CC J. PORCELLI CLINTON GEN
REPORTED: 11/27/07
HEARING : 12/10/07 01:53 PM LT J. ROCK CLINTON GEN
APPEAL : 12/26/07 AFFIRMED CAPT J. FACTEAU CLINTON GEN
180.11 FACIL CORRESPOND
30 D RECREATION PACKAGE COMMISSARY SERVICE DTES 12/10/07 01/09/08
30 D PHONE SERVICE DTES 12/10/07 01/09/08
30 D KEYPLOCK SUSPD TO 03/09/08
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TIER 2 INCIDENT: 07/14/06 05:55 PM CO E. MESUNAS CLINTON GEN
HEARING : 07/20/06 10:40 AM LT H. BOYLE CLINTON GEN
APPEAL : 07/26/06 AFFIRMED CAPT MINOQUE CLINTON GEN
109.12 MOVEMENT VIO.
6 D KEYPLOCK PACKAGE COMMISSARY SERVICE DTES 07/14/06 07/20/06
6 D PHONE SERVICE DTES 07/14/06 07/20/06
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TIER 2 INCIDENT: 05/19/05 08:00 PM CO D. MASON CLINTON GEN
HEARING : 05/25/05 07:55 AM LT W. ALLAN CLINTON GEN
106.10 DIRECT ORDER 109.12 MOVEMENT VIO.
30 D KEYPLOCK PACKAGE COMMISSARY SERVICE DTES 05/19/05 06/18/05
30 D PHONE SERVICE DTES 05/19/05 06/18/05
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TIER 3 INCIDENT: 03/24/05 12:00 PM CAPT KEARNEY WENDE
HEARING : 03/28/05 11:18 AM DSS MONAHAN WENDE
DIS.REV : 05/05/05 DSS J. TEDFORD CLINTON GEN
888.88 IPC
42 D IPC CONFINEMENT SERVICE DTES 03/24/05 05/05/05
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TIER 2 INCIDENT: 03/13/05 01:13 PM CO C. JACOBS WENDE
HEARING : 03/15/05 10:01 AM LT WALTER WENDE
APPEAL : 03/18/05 AFFIRMED DSS MONAHAN WENDE
106.10 DIRECT ORDER 109.10 OUT OF PLACE 109.11 ASSIGNED AREA
109.12 MOVEMENT VIO.
2 D KEYPLOCK PHONE PERSONAL TV SERVICE DTES 03/13/05 03/15/05
28 D KEYPLOCK PHONE PERSONAL TV SUSPD TO 06/13/05
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TIER 2 INCIDENT: 02/01/05 03:50 PM CO R. JONES WENDE
HEARING : 02/04/05 01:25 PM LT WALTER WENDE
APPEAL : 02/08/05 AFFIRMED DSS MONAHAN WENDE
100.10 ASSAULT ON INMATE 100.13 FIGHTING
30 D KEYPLOCK PHONE PERSONAL TV SERVICE DTES 02/01/05 03/03/05
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TIER 2 INCIDENT: 11/04/03 10:00 AM CO PROKOPEC ELMIRA RECEP
HEARING : 11/11/03 10:06 AM LT SMITH ELMIRA RECEP

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NOTE: ONLY COMPLETED HEARINGS ARE SHOWN

11/18/19 SDCP008 INMATE DISCIPLINARY HISTORY *FPMS* PAGE 004

INMATE ID#: 03B2443 GUNN, DARRELL

LOCATION: 0B-WS-22S

APPEAL : 11/21/03 AFFIRMED CAPT WHITMORE ELMIRA RECEP
109.15 REFUSE DBL CELLNG
30 D KEEPCLOCK COMMISSARY PHONE SERVICE DTES 11/04/03 12/04/03

NOTE: ONLY COMPLETED HEARINGS ARE SHOWN

SUCCESSFUL PRINT COMPLETION

11/18/19

SLOC010

LOCATOR SYSTEM

FPMS

PAGE 001

CHRONOLOGICAL HISTORY DISPLAY

07 SING SING GN

DIN 03B2443

NYSID 06665381K

FACILITY SING SING GN

LOCATION 0B-WS-22S

NAME GUNN, DARRELL

DOB [REDACTED]

SEX M

E/R NB

EFFECTIVE DATE	DATE ENTERED	SENDING FACILITY	RECEIVING FAC/ OUTCOUNT LOCATION	TRANSACTION TYPE	CELL
10/10/03	10/10/03		ELMIRA RECEP	NEW COMMIT	0B-06-03S
11/24/03	11/24/03	ELMIRA RECEP	WENDE	TRANSFER OUT	0A-06-43S
11/24/03	11/24/03	ELMIRA RECEP	AUBURN DEPOT	INTRANS RECV	0D-08-27B
11/25/03	11/25/03	AUBURN DEPOT	WENDE	INTRANS SENT	0D-08-27B
11/25/03	11/25/03	ELMIRA RECEP	WENDE	TRANSFER IN	0B-07-15S
05/03/05	05/03/05	WENDE	CLINTON GEN	TRANSFER OUT	0E-26-003
05/03/05	05/03/05	WENDE	AUBURN DEPOT	INTRANS RECV	0D-08-05T
05/04/05	05/04/05	AUBURN DEPOT	CLINTON GEN	INTRANS SENT	0D-08-05T
05/04/05	05/04/05	AUBURN DEPOT	DWNSTATE REC	INTRANS RECV	01-0F-001
05/05/05	05/05/05	DWNSTATE REC	CLINTON GEN	INTRANS SENT	01-0F-001
05/05/05	05/05/05	WENDE	CLINTON GEN	TRANSFER IN	LF-03-040
04/16/10	04/16/10	CLINTON GEN	UPSTATE SC	TRANSFER OUT	SH-UU-009
04/16/10	04/16/10	CLINTON GEN	UPSTATE SC	TRANSFER IN	08-A1-19B
01/24/11	01/24/11	UPSTATE SC	GRT MEAD GEN	TRANSFER OUT	08-A2-44B
01/24/11	01/24/11	UPSTATE SC	DWNSTATE REC	INTRANS RECV	02-0G-015
01/25/11	01/25/11	DWNSTATE REC	GRT MEAD GEN	INTRANS SENT	02-0G-015
01/25/11	01/25/11	UPSTATE SC	GRT MEAD GEN	TRANSFER IN	0E-08-16S
10/14/11	10/14/11	GRT MEAD GEN	ONONDAGA	COURT TRIP	0C-3E-32S
10/25/11	10/25/11		GRT MEAD GEN	OUTCOUNT RET	0E-08-06S
03/23/12	03/23/12	GRT MEAD GEN	ELMIRA GENER	TRANSFER OUT	0C-4E-17S
03/23/12	03/23/12	GRT MEAD GEN	DWNSTATE REC	INTRANS RECV	02-0B-031
04/03/12	04/03/12	DWNSTATE REC	ELMIRA GENER	INTRANS SENT	02-0B-031
04/03/12	04/03/12	GRT MEAD GEN	ELMIRA GENER	TRANSFER IN	0C-03-06S
06/17/14	06/17/14	ELMIRA GENER	GRN HAVN GEN	TRANSFER OUT	0C-01-05S
06/17/14	06/17/14	ELMIRA GENER	GRN HAVN GEN	TRANSFER IN	0H-11-20S
06/03/17	06/03/17	GRN HAVN GEN	DWNSTATE REC	INTRANS SENT	0E-22-30S
06/03/17	06/03/17	GRN HAVN GEN	DWNSTATE REC	INTRANS RECV	01-0D-023
06/05/17	06/05/17	DWNSTATE REC	GRN HAVN GEN	INTRANS SENT	01-0D-023
06/05/17	06/05/17	DWNSTATE REC	GRN HAVN GEN	INTRANS RECV	0E-22-30S
10/18/17	10/18/17	GRN HAVN GEN	1061	OUTSIDE HOSP	HS-IO-D01
10/20/17	10/20/17		GRN HAVN GEN	OUTCOUNT RET	HS-IO-E01
09/10/18	09/10/18	GRN HAVN GEN	1061	OUTSIDE HOSP	HS-IO-C01
09/12/18	09/12/18		GRN HAVN GEN	OUTCOUNT RET	HS-IO-F01
09/30/18	09/30/18	GRN HAVN GEN	0752	OUTSIDE HOSP	HS-IO-F01
10/01/18	10/01/18		GRN HAVN GEN	OUTCOUNT RET	HS-IO-F01
08/30/19	08/30/19	GRN HAVN GEN	SING SING GN	TRANSFER OUT	0E-22-30S
08/30/19	08/30/19	GRN HAVN GEN	SING SING GN	TRANSFER IN	0B-SS-15S

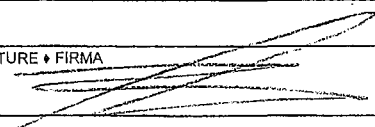
NOTE: THIS REPORT WAS RECONSTRUCTED USING HISTORICAL INMATE MOVEMENT DATA FROM COMPUTER RECORDS, AND IS ONLY AS ACCURATE AS IT WAS MAINTAINED BY THE FACILITY FOR THIS TIME PERIOD.

EXHIBIT 14

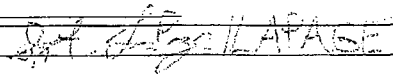
Elmira

Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) GUNN DARRELL	NO. ♦ NÚM. 03B2443	HOUSING LOCATION ♦ CELDA G-5-20
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE FIELD HOUSE ENTRANCE	INCIDENT DATE ♦ FECHA 7-26-13	INCIDENT TIME ♦ HORA APPROX 1545
3. RULE VIOLATION(S) ♦ VIOLACIONES 102.10 THREATS TOWARDS STAFF 106.10 FAILURE TO FOLLOW ORDER		
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE ON THE ABOVE DATE AND APPROX TIME INMATE GUNN, DARRELL 03B2443 (G-5-20) WAS SELECTED FOR A RANDOM PAT FRISK ENTERING THE BAIL PARK. INMATE CLEARED THE FRISK WITHOUT INCIDENT. AFTER THE PAT FRISK INMATE BEGAN TO STARE AT THIS OFFICER IN AN AGGRESSIVE MANNER. INMATE WAS ORDERED TO PROCEED TO THE BAIL PARK. INMATE BEGAN MAKING VERBAL THREATS TOWARDS THIS OFFICER. INMATE STATED, "I WILL HAVE YOUR JOB" INMATE ALSO THEN STATED, "JUST WAIT TILL YOU SEE ME AGAIN". INMATE WAS ORDERED TO RETURN TO HIS CELL DUE TO HIS DISRUPTIVE BEHAVIOR. INMATE COMPLIED WITHOUT FURTHER INCIDENT.		
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> EXHIBIT 11 200526HMA </div>		
REPORT DATE ♦ FECHA 7-26-13	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME B SCHIEBER	SIGNATURE ♦ FIRMA 
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) SIGNATURES: ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay) FIRMAS: 1. _____ 2. _____ 3. _____		

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	IF YES, GIVE NAME & # _____
¿HUBO OTROS RECLUSOS ENVUELTOS? SÍ <input type="checkbox"/> NO <input type="checkbox"/>	DE SER SÍ DÉ LOS NOMBRES Y DIN _____
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	OR • O
¿ESTUVO EL RECLUSO CONFINADO/RESTRINGIDO PREVIO AL INCIDENTE? SÍ <input type="checkbox"/> NO <input type="checkbox"/>	
AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED? YES <input type="checkbox"/> NO <input type="checkbox"/>	
¿SE CONFINÓ/RESTRINGÓ AL RECLUSO COMO RESULTADO DE ESTE INCIDENTE? SÍ <input type="checkbox"/> NO <input type="checkbox"/>	
8. WAS INMATE MOVED AT ANOTHER HOUSING UNIT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
¿MUDARON AL RECLUSO A OTRA UNIDAD DE VIVIENDA? SÍ <input type="checkbox"/> NO <input type="checkbox"/>	
IF YES, (a) CURRENT HOUSING UNIT _____ (b) AUTHORIZED BY _____	
DER SER SÍ, (a) UNIDAD DE VIVIENDA ACTUAL _____ (b) AUTORIZADO POR _____	
9. WAS PHYSICAL FORCE USED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> (IF YES, FILE FORM 2104) _____	
¿SE USÓ FUERZA FÍSICA? SÍ <input type="checkbox"/> NO <input type="checkbox"/> (DER SER SÍ, SOMETA EL FORMULARIO No. 2104) _____	
AREA SUPERVISOR ENDORSEMENT 	
ENDOSO DEL SUPERVISOR DEL ÁREA _____	

Distribution: WHITE - Disciplinary Office CANARY - Inmate (After review) ♦ Distribución: BLANCA - Oficina Disciplinaria AMARILLA - Recluso (después de la resión)

ACCEPTANCE OF TIER II MISBEHAVIOR REPORT

INMATE NAME Gunn, D. DIN 03B2443

INCIDENT DATE 7-26-13

I received a copy of a Tier II Misbehavior Report on this date.

(☒) I DID RECEIVE A COPY OF MY REPORT, NUMBER OF PAGES 1

INMATE SIGNATURE [Signature] DATE 7-27-13

OFFICERS SIGNATURE [Signature] DATE 7-27-13

WITNESS SIGNATURE _____ DATE _____
(INMATE REFUSED TO SIGN)

*** REQUESTOR: 110DIS - Disciplinary (Tier 3) Elmira ***

*** S Y S M I N B A S K E T P R I N T ***

MESSAGE ID: 011135AAA DATE: 08/13/13 TIME: 11:32am PRIORITY: 000

TO: 110DIS - Disciplinary (Tier 3)
General Correspondence
Elmira

FROM: 999SHU - Housing, Special
General Correspondence
Cen - Special Housing/Discip

SUBJECT: Reply to 03B2443 GUNN

*** Sent by Alternate User "999SHUSML" for "999SHU" ***
*** Answer From: 110DIS - Disciplinary (Tier 3); 08/13/13 10:48am
*** Answer From: 999SHU - Housing, Special; 08/09/13 08:16am
*** Sent by Alternate User "999SHUOXR" for "999SHU" ***
*** Original Author: 110DIS - Disciplinary (Tier 3); 08/09/13 07:51am

DISCIPLINARY HEARING EXTENSION REQUEST

FACILITY: ELMIRA CONTACT: JC DATE: 08 / 09 / 13

INMATE: GUNN, DARRELL DIN: 03B2443

DATE OF REPORT: 07 / 26 / 13 TIER: 2

Inmate confined/restricted for this report?

X YES DATE: 07 / 26 / 13 PRIOR NO

Has the hearing commenced?

X YES NO DATE: 07 / 31 / 13

Reason(s) for extension request

Sent to observation/special watch

Date: / /

Sent to CNYPC/Satellite Facility

Date: / /

Out to court

Date: / /

Outside/facility hospital

Date: / /

Transferred - Facility:

Date: / /

X Employee witness unavailable

Return Date: 08 / 12 / 13

Requested assistant unavailable

Return Date: / /

Hearing Officer unavailable

Return Date: / /

Inmate/non-employee witness unavailable - Explain:

Other - BE SPECIFIC:

Has there been a prior extension in this case?

YES X NO EXT.NO. DATE: / /

Other comments/explanations:

END OF FORM

*** Comments From: 999SHU - Housing, Special; 08/09/13 08:16am
13-ER-2275. Granted to complete by 08/12/13. OR.

*** Comments From: 110DIS - Disciplinary (Tier 3); 08/13/13 10:47am
REQUEST AFTER HOURS EXTENSION TO COMPLETE 8/15/13 AS HEARING OFFICER
WAS UNAVAILABLE AND STAFF WAS UNAVAILABLE TO ENTER. EMPLOYEE WITNESS
IS ALSO UNAVAILABLE.

*** Comments From: 999SHU - Housing, Special; 08/13/13 11:31am
GRANTED TO COMPLETE BY 8/15/13. SL.

Sent to: 110DIS Disciplinary (Tier 3) (to)

WITNESS-INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)ELMIRA

Correctional Facility

GUNN, DARRELL03B2443

Inmate Name (Print)

DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

C.O. B. SCHIEBEL

Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 08-15-13 Explanation: WITNESS NOT ON DUTY, WITNESS TESTIFIED VIA SPEAKER PHONE. INMATE ALLOWED TO ASK WITNESS QUESTIONS OUTSIDE THE INMATE'S PRESENCE.

Requested witness:

- ☐ Permission to call the requested witness is denied.
☐ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: _____ Explanation: _____

Requested witness:

- ☐ Permission to call the requested witness is denied.
☐ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: _____ Explanation: _____

Signature

Hearing Officer

Inmate

DIN

Date Received

REVIEW OFFICER LT R. WARNOCK
REVIEW DATE 07/27/13 TIER 2
C.R. DATE NONE M.E. DATE LIFE

- 1) NAME GUNN, DARRELL DIN 03B2443 LOCATION 06-05-20S
2) INCIDENT DATE 07/26/13 INCIDENT TIME 03:45 PM
3) INMATE WAS CONFINED
4) INMATE WAS NOT RELEASED AT REVIEW
5A) SERVING OFFICER C.A. D. Wenzel SERVING DATE/TIME 7/27/13 8:20 AM
5B) RELEASED FROM PREHEARING CONFINEMENT? DATE AUTHORIZED 1/1/13
6) ASSISTANT NAME n/a
7) INTERVIEW DATE 1/1/13 INTERVIEW TIME 1:00
8) EXTENSION NUMBER 13-ER-2275 (IF APPLICABLE)
9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO INMATE
PURSUANT TO DIRECTIVE 4937 OR 4938
TEST REQUEST FORMS TEST PROCEDURE FORMS
TEST RESULT FORMS APPENDIX C OTHER (SPECIFY)
10) INMATE 15 ENGLISH SPEAKING
A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO INMATE? NO
B) INTERPRETOR AT HEARING NO
11) HEARING BEGIN: DATE 7/31/13 TIME 12:25 END: DATE 8/10/13 TIME 1:50 PM
12) CHARGES: SPECIFY INMATE'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING
CHARGE INMATE'S PLEA
NUMBER DESCRIPTION OF CHARGES REPORTED BY
106.10 REFUSING DIRECT ORDER CO B. SCHIEBER NOT GUILTY
102.10 THREATS CO B. SCHIEBER NOT GUILTY

SIGNATURE OF INMATE Refused To Sign

DATE 7/31/13 TIME 12:25

- 13) WITNESSES: IF NONE REQUESTED, CHECK HERE

A) REQUESTED BY INMATE	TESTIFIED	IN INMATE'S PRESENCE
<u>Sgt. Collmer</u>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
<u>Co. B. Schieber</u>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
_____	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
_____	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
B) REQUESTED BY HEARING OFFICER	TESTIFIED	IN INMATE'S PRESENCE
<u>NONE</u>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
_____	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
_____	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
_____	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>

NOTE IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE PRESENCE OF THE INMATE CHARGED, AND/OR THE INMATE IS NOT PERMITTED TO REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT DETERMINATION MUST BE GIVEN TO THE INMATE AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE: LT B. Schieber

DCP004

DISCIPLINARY HEARING DISPOSITION RENDERED

ELMIRA GENER

TAPE NUMBER 13-123

DIN: 03B2443 NAME: GUNN, DARRELL

LOCATION: 0G-05-20S

INCIDENT DATE & TIME: 07/26/13 03:45 PM TIER 2

REVIEW DATE: 07/27/13 BY: LT R. WARNOCK

DELIVERY DATE & TIME: 7/27/13 8:20 AM BY: CO D. WENZELHEARING START DATE & TIME: 7/31/13 12:25 PM BY: LT RBLOOHEARING END DATE & TIME: 8/15/13 1:50 PM BY: LT RBLOODOES THIS MISCONDUCT MEET THE CRITERIA FOR WORKPLACE VIOLENCE? Y / N

CHARGE

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
106.10	REFUSING DIRECT ORDER	CO B. SCHIEBER	GUILTY
102.10	THREATS		GUILTY

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MO	DAYS	START DATE	RELEASE DATE	SUSPEND MO	DAYS	DEFERRED RESTITUTION MO	DAYS	\$\$\$\$. cc
B400	PRE-HEARING KEEPLOCK	20		07/26/13	08/15/13	—		—		
B000	KEEPLOCK	30		08/15/13	08/25/13	20		3mos		
F000	COMMISSARY									
G000	PHONES									
E000	PACKAGES									

ELMIRA CORRECTIONAL FACILITY

SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN:

03B2443

NAME:

Gunn, Darrell

HEARING DATE:

8/15/13

A. STATEMENT OF EVIDENCE RELIED UPON :

The misbehavior report and testimony given by Sergeant Collmer and Officer Schieber. The testimony from the witnesses indicates to me that you did indeed make threats towards staff and failed to follow staff direction. Your numerous objections throughout the hearing were noted for the record. These actions as well as your interruptions and accusations during testimony make it apparent to this Hearing Officer that this was an attempt on your part to discredit the hearing and take control of the proceedings.

B. REASON FOR DISPOSITION :

This disposition is intended to act as a deterrent to you and other inmates against this type of behavior in the future. Your disciplinary record reveals a disturbing number of violations that indicate a disregard for authority and following rules and regulations. This disposition is intended to impress upon you the importance of following staff orders and obeying the rules and regulations of the department and this facility. This disposition is given as punishment and will serve as a warning to you that continued misbehavior of this type could result in more serious sanctions against you including, but not limited to, confinement to SHU and recommended loss of good time.

C. SPECIAL INSTRUCTION ON VISITATION OR CORRESPONDENCE RESTRICTIONS, REFERRALS OR SPECIAL EVENT LOSS :

NONE

I HAVE RECIEVED A COPY OF THIS HEARING DISPOSITION DATED: Thursday, August 15, 2013
HEARING OFFICER SIGNATURERefused To Sign
INMATE SIGNATURE08/15/13
DATE & TIME RECIEVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

X FOR TIER II HEARING-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS. FOR TIER III HEARING-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

**APPEAL FORM TO THE SUPERINTENDENT
VIOLATION (TIER I) AND DISCIPLINARY HEARINGS (TIER II)***

RECEIVEDName: CARROLL SCOTTDIN# 654200

AUG 20 2013

Housing Location F-3-7ELMIRACorrectional Facility ELMIRA CORR. & REC. CTR.
SUPERINTENDENT'S OFFICEI wish to appeal my ☐ Tier I ☒ Tier II hearing completed on 8/15/13**STATE SPECIFIC GROUNDS FOR APPEAL:**

I am currently keeplock confinement as retaliation for reporting sexual abuse by a false misbehavior report written by EO subject, who rubbed and touched my rectum with his hand and finger trying to penetrate my rectum through my clothes. Consequently, I had a bowel movement soreness, and abrasion in my rectum. I'm experiencing headaches, stomach knots, stomach cramps, stress, depression, and a mental anguish, and anger.

During the Pat Frisk when C.O. Schieber told me to get my things off the table (Shampoo, Ink Pen, and handkerchief). I looked at him and he said Schieber asked me what I was looking at. I stated "pen". He asked why? I said "you just touched my asshole, what is your name?" He said Schieber and spelled it out S-c-h-i-e-b-e-r. He then told me to go back to my cell. The other C.O. standing there he told me "off weights." I went back to my cell. Before I arrived, I reported the

*NOTE: Tier I appeals must be submitted within 24 hours of hearing.

Tier II appeals must be submitted within 72 hours of hearing.

Sexual assault to prison guards standing at "Center Gate". All Chp
Continued on
Separate pp

SUPERINTENDENT'S REPLYYour appeal of the Tier II Hearing conducted on 8/15/13 has been reviewed by me. The decision of the hearing officer is hereby:☒ Affirmed☐ Reversed☐ Modified

I have been designated by Supt. Chappius under Title 7, NYCRR, Chapter V Section 253.8 to respond to your Tier II Appeal.

G. E. Hill
(Superintendent of Designee)

8/21/13
(Date)

(Date)

Hearing completed on 8/13/13 Elmira Correctional Facility
Continuation Page 3

For medical call-out for 10 am. On 8/7/13, Lt. LaBoulet interviewed me at my cell, he told me "It's going to ex-
acerbate." I asked why? The Lieutenant did an in-
complete interview and incomplete investigations and walked
away without interviewing any inmate witnesses in C-Block.

Moreover, this appeal is to show cause. the Hearing Officer
Lt. Ballard has participated in the investigation of sexual
assault and failure to protect me from sexual assault. A
conflict of interest established in Title 7 NYCRR section
853.1, where Lt. Ballard previously told me, "do your
like a man" and "don't be wasting my time" as deliber-
ate interference. Contrary to prison policy, Hearing officer at all
times must maintain an impartial attitude and exercise
degree of patience and forbearance.

Thus, by virtue of the cumulative effect of the improper
conduct of hearing officer, i.e. adjourning the hearing for an
known reason; interrupting me; incompetent; answering
questions for witness; failing to acknowledge all my objections
punishing me contrary to correction law section 138; Hearing
Officer admitted he was partial; Hearing Officer stating
C.O. Schieber put his hand in my pants. I stated clearly C.O.
Schieber tried to penetrate my rectum through my clothes. We
not allow the name of other prison guard witnesses. Would
allow surveillance video tape of Ball Field or Ball Field entrance

In addition, Sergeant Collmer admitted he was in Ballfield. Sgt
Collmer admitted his testimony was based on written ^{false} mis-
behavior report not as actually seeing the Pat Frisk. Thus, the
untruthfulness, Sgt. Collmer admitted was a witness. Never
Signed the False Misbehavior report per departmental directive 493

Furthermore, C.O. Schieber did not answer the description of
False misbehavior reports. C.O. Schieber did admit the False
misbehavior report was based on Pat Frisk. C.O. Schieber
did not know the name of other supervisor on the day an
accuse of the False misbehavior report. False misbehavior report

Completed on 6/13/13 Elkhart Correctional Facility
Continuation Page 4

is not endorsed by employee witnesses per directive 4932.

I conclude, clearly, hearing tape substantiates evidence, the lying and cover-up for the sexual assault and area supervisor, Sgt. Collier out in the Ball Field enjoying the day, neglecting his duty.


The video tape was not allowed to show the lies of Sgt. Col C.O. Schieber, and Lt. Ballard combined. Moreover, there is no such thing as a random pat frisk per departmental directive # 4910.

Accordingly, dismiss this false misbehavior report and protect me from sexual assaults, sexual abuse, and sexual harassment inflicted upon me by prison guards.

Struggling

Shirley D.
Darrell Egan 030244

EXHIBIT 15

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p>	Grievance Number EL-42205-14	Desig./Code I/49	Date Filed 2/11/14
	Associated Cases		
	Facility Elmira Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE		Title of Grievance Discriminating Slurs/Actions	

7/30/14

GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

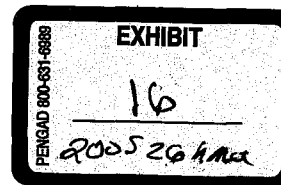
CORC notes that the facility administration has conducted a proper investigation, and that CO S... denies sexually abusing the grievant or being unprofessional on 2/10/14. Further, CORC notes that this matter was properly reviewed for an investigation by the IG SCU. The grievant may write to IG for any information regarding his complaint. Contrary to the grievant's assertions, CORC has not been presented with sufficient evidence to substantiate any malfeasance by staff.

CORC asserts that there is no provision in Department policy for an inmate to request a separation from staff.

CORC notes that Directive #4040, Section 701.1, states, in part, that the grievance program is not intended to support an adversary process and Section 701.6 (b) states, in part, that no reprisals of any kind shall be taken against an inmate or employee for good faith utilization of this grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism.

With respect to the grievant's appeal, CORC notes that it is the responsibility of the grievant to contact an advisor and he must be willing to accept the role of an advisor. Further, CORC advises him to address any further concerns to an area supervisor at the time of incident.

JAD/tll/amb



CASE HISTORY AND RECORDS
ELMIRA CORRECTIONAL FACILITY

Grievance No.: EL-42-205-14 ✓
Name: 03-B-2443 GUNN, D.
Title: DISCRIMINATING SLURS/ACTIONS
Code: 49.2
Designation: INSTITUTIONAL

Date Filed: 2/11/2014

NYS DEPT OF
CORRECTIONS AND
COMMUNITY SUPERVISION

IGRC Date:

APR 22 2014

Supt. Date: 2/20/2014

Appeal Date: 4/18/2014

RECEIVED
INMATE GRIEVANCE

Investigation:

IGRC Invest. Date:

Facility Policy No.:

Capt. Date:

DSS 2-19-14

Supv. Date:

LT. 2-14-14

Employee Info:

CO 2-15-14

Other:

Prior CORC No.:

Office Of Diversity Mgt.:

IGP Supervisor's Signature:

B. Am...

CASE HISTORY AND RECORDS ELMIRA CORRECTIONAL FACILITY

Grievant's DIN and Name: **03-B-2443 GUNN, D.**
Grievance No.: EL-42-205-14
Title: DISCRIMINATING SLURS/ACTIONS
Code: 49.2
Date Filed: 2/11/2014

Grievance:

Grievance was filed on 2/11/14, wherein grievant has cited Paul Chappius, Jr., Superintendent of Elmira Correctional Facility (ECF), with obstruction of justice. For willfully and knowingly choosing to cover-up and or deny grievance complaint of sexual and verbal harassment filed by grievant against facility staff (C.O. Schieber). While at the same time supporting and condoning these same actions that are being committed. Grievant asserts that all alleged allegations of sexual and verbal harassment and or sexual explicit words/suggestions with homosexual content are in fact true and should not be discarded due to investigation by facility staff investigating facility staff. Grievant further, asserts that an investigation by conducted by NYS State Police and not by facility staff.

Action Requested:

Disciplinary actions be forthcoming against C.O. Schieber, that no contact be allowed between C.O. Schieber and grievant and that a full investigation be conducted by I.G. and NYS State Police against C.O. Schieber for sexual and verbal harassment.

IGRC Recommendation:

N/A Per Directive 4040 P/T to Supt. for review and response.

Supt. Response:

GRIEVANT CLAIMS ALLEGATIONS OF DISCRIMINATING SLURS AND ACTIONS BY AN OFFICER. CO S...DENIES THESE ALLEGATIONS. INTERVIEWS WERE CONDUCTED AND WRITTEN STATEMENTS WERE SOLICITED AND ATTACHED. IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED BEHAVIOR OCCURRED. GRIEVANCE IS DENIED.

Appeal:

Grievant is appealing determination rendered by Superintendent, on the grounds that grievant believes that in order to deny the existence of any impropriety on the part of staff, the Superintendent has chose to cover up all alleged actions of sexual and verbal harassment by stating that no evidence was found to support said allegations. Grievant asserts that he has experienced acts of retaliation from C.O. Schieber for filing grievances. Finally, grievant states that when he informed Lt. Ballard, that he wished to filed charges against C.O. Schieber for sexual and verbal harassment he was told "no" by Lt. Ballard.

INMATE GRIEVANCE COMPLAINT

49.2

DISCRIMINATING SLURS/ACTIONS

Grievance No.

EL42205-14

ELMIRA

CORRECTIONAL FACILITY

Date February 10, 2014

Name DARBELL GUNN

Dept. No. 03B-2443

Housing Unit C-1-5

Program

AM

PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) Superintendent Paul Chappius, Jr. has created and/or allowed a policy condoning C.O. Schieber to sexual assault, sexual abuse, and sexual harass, and retaliate against me. On 2/10/14, C.O. Schieber came to my cell approx. 3:15 p.m. and waved at me in a homosexual advancement way. Thereafter, returning from recreation run C.O. Schieber blows me a kiss into my cell. Soon later while I existed mess hall C.O. Schieber called me a faggot. C.O. Schieber's repeated homosexual idiosyncrasies towards me is weighing on me causing needless physical and mental injuries combined.

Grievant

Signature

Darrell Gunn

Grievance Clerk

Date:

Advisor Requested

☒ YES☐ NO

Who:

Singleton and/or Webb

Action requested by inmate:

Disciplinary action for C.O. Schieber; No contact with C.O. Schieber; receive sexual abuse counseling; Inspector General investigation; Free me from sexual abuse and retaliation.

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant


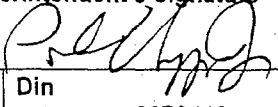
Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

000005

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES INMATE GRIEVANCE PROGRAM SUPERINTENDENT	Grievance No. EL42-205-14	Date Filed 2/11/14
	Facility ELMIRA CORRECTIONAL FACILITY	Policy Designation I
	Title of Grievance DISCRIMINATING SLURS/ACTIONS	Class Code 49.2
	Superintendent's Signature 	Date 2/20/14
	Grievant GUNN, D	Housing Unit C1-5

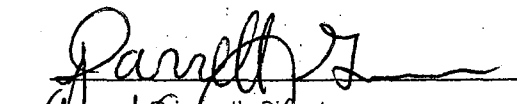
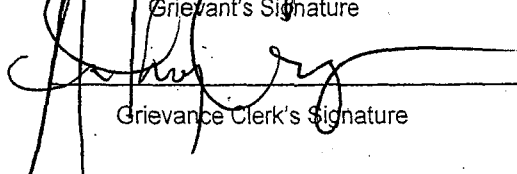
GRIEVANT CLAIMS ALLEGATIONS OF DISCRIMINATING SLURS AND ACTIONS BY AN OFFICER.
 CO S... DENIES THESE ALLEGATIONS.
 INTERVIEWS WERE CONDUCTED AND WRITTEN STATEMENTS WERE SOLICITED AND
 ATTACHED.
 IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED
 BEHAVIOR OCCURRED.
 GRIEVANCE IS DENIED.

Received on 4/7/14 from IGRC office in person.

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal.* Please state why you are appealing this decision to C.O.R.C.

WRITTEN ON SEPARATE
PAPER FOR LACK OF SPACE. Three (3) pages.


 Grievant's Signature

 Grievance Clerk's Signature

4/10/14
 Date
4/14/14
 Date

* An exception to the time limit may be requested under Directive # 4040, Section 701.6(g).

DARRELL GUNN 03-B-2443
Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902-0500
April 10, 2014

TO: Central Office Review Committee

RE: Grievance Number EL42-163-14
DISCRIMINATING SLURS/ACTIONS
Appeal Statement

Dear C.O.R.C.:

I am being sexually assaulted,
sexually abused, and sexually harassed, among
other things, retaliated against and tormented
by prison guards and prison officials combined.

In fact, Mr. Chappius, Jr., Superintendent is deliberately condoning and promoting this pattern of official misconduct, intentional misconduct, and deliberate indifference causing me serious risk to harm. Here, I am suffering serious physical injury and mental injury, alike.

More than this, Superintendent's decision is arbitrary and capricious and a conflict of interest, for the following reasons listed below:

1) grievant received no advisor during grievance complaint investigation interview conducted by Lieutenant Ballard, in which, Lt. Ballard asked: "do you have anything to add?"

I responded, "yes", "I would like IGRC representative as an advisor."

My request was denied resoundingly "No" by Lt. Ballard. In effect, contrary per directive # 4040 section 701.2 (h) and 701.6 (a).

2) Grievant knows C.O. Schieber will retaliate against him.

3) C.O. Schieber has retaliated against grievant.

4) C.O. Schieber did retaliate against grievant for speaking with Inspector General.

5) Grievant is in fear of other prison guards who will retaliate against me on behalf of C.O. Schieber. They are part of an insidious "Brotherhood."

6) This grievance complaint basis is on Mr. Chappius, Jr., Supt. actions and inactions. Thus, his decision is in direct conflict of interest for contention.

In conclusion, for the reasons within grievance complaint and above grievant prays that that C.O.R.C. invoke his prisoner and constitutional rights combined, and grant this grievance in full.

(2)

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
ELMIRA CORRECTIONAL FACILITY

OFFICE OF
DEPUTY SUPERINTENDENT FOR SECURITY

Memorandum


TO: Paul Chappius, Jr., Superintendent
FROM: Paul Piccolo, DSS
DATE: February 19, 2014
SUBJECT: GRIEVANCE EL 42-205-14
Inmate Gunn, Darrell (03B2443)

Supt. Chappius,

I have completed my review of the investigation into the above referenced matter and am prepared to respond with the following:

On 02/14/14, Lt. Ballard interviewed the grievant at his cell on C Block flats regarding his allegations discriminating slurs and actions by CO Schieber. Grievant was asked about the allegations in complaint and grievant refused to answer. Grievant was asked if he had any witnesses to the allegations. Grievant replied NO and had nothing further to add. CO Schieber was interviewed via phone and provided written statement denying the allegations upon his return to work 2/15/14.

Based on the investigation, I find that the information reported and supporting documentation to this matter is appropriate and no evidence is present to suggest staff malfeasance.



Paul Piccolo
Deputy Superintendent for Security Services

PTP:lmw
Attachment
cc: Inmate File Gunn, Darrell (03B2443)

RECEIVED

FEB 20 2014

ELMIRA CORR. & REC. CTR.
SUPERINTENDENT'S OFFICE



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS & COMMUNITY SUPERVISION
ELMIRA CORRECTIONAL FACILITY
P.O. BOX 500
ELMIRA, NEW YORK 14902
607-734-3901

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

P. CHAPPIUS
SUPERINTENDENT

TO: Supt. P. Chappius
FROM: Lt. R.J. Ballard
DATE: 02-14-14
SUBJECT: Grievance # EL-42-205-14 - Inmate D. Gunn 03B2443

Sir,

Per your direction, I conducted the investigation into the Grievance authored by Inmate Gunn 03B2443. Officer Schieber is the staff member mentioned in the complaint. He is currently on his scheduled days off. I did contact him on today's date, via telephone, and interviewed him as to the allegations in the complaint. As to the allegation that he went to the inmate's cell on 02/10/14 and waived at him in a homosexual advancement way, he denied doing that in any manner. As to the allegation that when returning from the recreation run that he blew a kiss into the inmate's cell, Officer Schieber denied any doing of that. As to the allegation that when the inmate was exiting the messhall, Officer Schieber called the inmate a faggot, Officer Schieber denied doing this as well. I then informed Officer Schieber that upon his return to duty, he is to author a written statement, answering the allegations, as well. He informed me that he would do so.

I also interviewed Inmate Gunn 03B2443 on today's date at 7:20pm. I first showed him the Grievance and asked him to verify that he had authored the complaint. He informed me that he did. I questioned him as to the allegations in the complaint. He refused to make a statement. I then questioned him if he had any witnesses to any of the allegations. He replied, "No." I then asked him what he feels the officer did wrong in regards to him. He replied, "I don't recall." He then stated he was done talking. I then ended the interview.

Based on my telephone conversation with Officer Schieber, and the inmate's refusal to cooperate with my investigation, and his lack of witnesses to any wrong doing by the officer, I find no merit in his complaint.

Respectfully Submitted,

Lt. R.J. Ballard

Lt. R.J. Ballard

RECEIVED

FEB 18 2014

ELMIRA CORR. & REC. CTR
DEPT. SUPERINTENDENT

000012

MEMORANDUM

TO: Supt P. CHAPPIUS

FROM: CO B. SCHIEBER

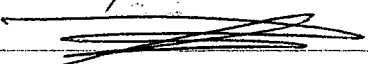
SUBJECT: GRIEVANCE # EL-42-205-14 GUNN, D 03B2443 C-1-S

DATE: 2-15-14

SIR,

AT NO TIME HAVE I EVER SEXUALLY ASSAULTED, SEXUALLY ABUSED, SEXUALLY HARASSED, OR RETALIATED AGAINST INMATE GUNN, D 03B2443 C-1-S. ON 2-10-14 I WAVED AT A TOTAL OF ZERO INMATES. FURTHERMORE I AM UNSURE HOW TO ACCOMPLISH A WAVE IN A "HOMOSEXUAL ADVANCEMENT WAY" AS STATED BY THE INMATE. ON 2-10-14 I DID NOT BLOW ANY KISSES TOWARD THIS INMATE, OR ANY INMATE FOR THAT MATTER. I DID NOT CALL THIS INMATE A "FAGGOT" NOR DO I HAVE ANY HOMOSEXUAL IDIOSYNCRASIES THAT I AM AWARE OF. ANY AND ALL ACTUAL CONTACT WITH THIS INMATE HAVE BEEN WITHIN DEPARTMENT GUIDELINES AND ABSOLUTELY PROFESSIONAL IN NATURE.

RESPECTFULLY SUBMITTED


CO B. SCHIEBER

RECEIVED

FEB 18 2014

ELMIRA CORR. & REC. CTR.
SUPERINTENDENT'S OFFICE



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION

Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902
807-734-3901

INMATE GRIEVANCE PROGRAM
PREA GRIEVANCE

TO: WATCH COMMANDER/DEPUTY SUPERINTENDENT SECURITY

FROM: B. ABRUNZO, IGPS

DATE: 7/21/14

GRIEVANCE # EL-42205-14 _____

PURSUANT TO DIRECTIVE 4027A/4028A, SEXUAL ABUSE PREVENTION AND INTERVENTION STAFF ON INMATE, SECTION V-B-2: ANY EMPLOYEE WHO RECEIVES A REPORT OF SEXUAL ABUSE, SEXUAL THREATS, OR STAFF VOYEURISM SHALL IMMEDIATELY NOTIFY THE WATCH COMMANDER.

NAME: GUNN, D.

DIN: 03B2443

LOCATION: C1-5

HAS FILED THE ATTACHED SEXUAL ABUSE/SEXUAL THREATS/STAFF VOYEURISM GRIEVANCE WITH THE INMATE GRIEVANCE PROGRAM. AN INVESTIGATION AND RESPONSE IS REQUIRED WITHIN (12) TWELVE WORKING DAYS FROM THE DATE THIS GRIEVANCE WAS FILED. PLEASE ADDRESS THE GRIEVANT'S ALLEGATIONS AND SUPPLY ALL SUPPORTING DOCUMENTATION. THE EMPLOYEE(S) WHOM THIS GRIEVANCE IS AGAINST SHALL SUPPLY WRITTEN DOCUMENTATION TO THE WATCH COMMANDER'S OFFICE.

Dennis, Julie A (DOCCS)

From: Donnelly, Lynnell C (DOCCS)
Sent: Monday, July 21, 2014 4:02 PM
To: Dennis, Julie A (DOCCS)
Cc: Abrunzo, William J (DOCCS ONLY); Piccolo, Paul T (DOCCS)
Subject: GUNN, DARRELL 03B2443

Per your request, please find the PREA log numbers with reference to the above.

Gunn, Darrell 03B2443	EL42-163-14	<u>PREA# 2014-12</u>	DOI: 2/4/14	Verbal Harassment
Gunn, Darrell 03B2443	EL42-205-14	<u>PREA# 2014-13</u>	DOI: 2/10/14	Discriminating Slurs/Actions

Thank you.

Lynnell Donnelly, Secretary 1
Elmira Correctional Facility
lynnell.donnelly@doccs.ny.gov
607-734-3901 ext. 5020



STATE OF NEW YORK
**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

THE HARRIMAN STATE CAMPUS - BUILDING 2

1220 WASHINGTON AVENUE

ALBANY, N.Y. 12226-2050

MEMORANDUM

TO: Inspector General's Office

FROM: Karen Bellamy, Director, Inmate Grievance Program *KB*

DATE: July 30, 2014

SUBJ: CORC Decision: EL-42205-14

The attached decision is forwarded to you for information.

CORC notes that the grievant, D. Gunn, #03-B-2443, has filed a grievance alleging sexual harassment that was documented in the facility PREA log under #2014-13 and referred to your office. A copy of this grievance is being forwarded for whatever action is deemed appropriate.

KRB/tll
Attachment

cc: Grievance File - EL-42205-14
Paul Chappius, Superintendent, Elmira Correctional Facility
Bill Abrunzo, IGP Supervisor, Elmira Correctional Facility

ELMIRA CORRECTIONAL AND RECEPTION CENTER GRIEVANCE OFFICE

STATE OF NEW YORK

COUNTY OF CHEMUNG

I, M. O'Dell, being duly sworn, depose and say: I am an Inmate Grievance Supervisor at the Elmira Correctional and Reception Center, and further state that attached is a Certified Copy of the Grievance(s): EL 40666-13; 40672-13; 40777-13; 40798-13; 40800-13; 40801-13; 40802-13; 40803-13; 40837-13; 40868-13; 40880-13; 40954-13; 41072-13; 41105-13; 41106-13; 41247-13; 41887-13; 42163-14; 42205-14; 42366-14; 42451-14 for inmate GUNN, D. 03B2443

And that I have compared the foregoing and attached copy with the said original now on file and/ or generated from the Department of Corrections Computer System in my office and it thereof contains a true and correct transcript and copy of said original and/or computer generated record and grievance copy as of this date, kept in the normal course of business at the Elmira Correctional and Reception Center.

Misty L. O'Dell
Signature

Misty L. O'Dell
Name

Inmate Grievance Supervisor
Title

ERIN E. O'BRIEN
NOTARY PUBLIC, STATE OF NEW YORK
CHEMUNG COUNTY, NO 01066232032
COMMISSION EXPIRES DECEMBER 31, 2019

Sworn to before me,
this 9th day of November 2017.

Erin E. O'Brien
NOTARY PUBLIC

EXHIBIT 16



76 80

NEW YORK STATE
DEPARTMENT OF CORRECTIONS &
COMMUNITY SUPERVISION
INSPECTOR GENERAL'S OFFICE
REPORT OF INTERVIEW

NAME: CANN Darrell

I.G. CASE#: IND/14/0134

IDENTIFICATION: State

SS# or DIN#: 03B2443

DATE: 2/4/14 TIME: 2:10 pm

LOCATION: Ecf

SENIOR INVESTIGATOR: James Lovelace

I have been here for 2 yrs. On 1/4/14 it was around 7:30 pm in the mess hall corridor. I saw CO Schieber do an aggressive pat frisk on inmate Green. I saw CO Schieber reach and feel inmate Green's groin area and anus. Inmate Green was fully clothed. I went into recreation, he last I saw Green he was on the wall in a frisk position. I know Green from C-10 and here for about one month. Prior to this at around 4:30 pm we went to chow Green stayed back. I heard Green had words with Schieber over the windows being open in C-1. I heard Schieber took Green into a room and slapped Green up. On our way back from chow Sgt Santiago came and ordered the windows closed.

Name: Gunn, DarrellPage 2 of 2

A porter closed the windows. I did not talk to Green, or see him after Green. Then we went to recreation. I did not see any injuries to Green. He never spoke about the incident over the windows. I did not see Green get assaulted. I only heard about it. I know Green got a ticket for this. I am not sure what the ticket was for. After I went to recreation that was the last I saw of Green. X

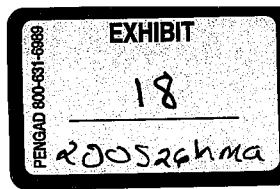
Darrell Gunn

03-B-2443

DARRELL GUNN

EXHIBIT 17

Department of Corrections and Community Supervision



Lindsey B. Chiboucas

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Active Cases

<input type="checkbox"/> Case Number	Grievant Last Name	Grievant DIN Number	Case Code	Title	Date Filed†	Received Date	Schd Date
Count= 27							
GH-81558-15	GUNN	03B2443	36 - Inmate Accounts	Refund Fees	12/11/2015	4/11/2016	10/25/2017
GH-83126-16	GUNN	03B2443	41 - Legal Mail	Receive Legal Mail Timely	5/31/2016	11/8/2016	10/25/2017
GH-83672-16	GUNN	03B2443	22 - Medical	Provide Treatment	8/1/2016	2/15/2017	8/8/2018
GH-83827-16	GUNN	03B2443	30 - Package Room - #4911	Receive Disallowed Items	8/17/2016	1/18/2017	10/18/2017
GH-83900-16	GUNN	03B2443	22 - Medical	Receive Treatment	8/24/2016	2/15/2017	8/8/2018
GH-83901-16	GUNN	03B2443	30 - Package Room - #4911	List All Items In Package	8/24/2016	1/13/2017	10/25/2017
GH-83929-16	GUNN	03B2443	23 - Housing - Internal Block Affairs	Denied Sick Call	8/29/2016	1/13/2017	10/25/2017
GH-84010-16	GUNN	03B2443	22 - Medical	Denied Treatment	9/6/2016	2/22/2017	8/8/2018
GH-84011-16	GUNN	03B2443	22 - Medical	Denied MRI And Pain Medications	9/6/2016	2/22/2017	8/8/2018
GH-84089-16	GUNN	03B2443	23 - Housing - Internal Block Affairs	Denied Sick Call	9/12/2016	2/3/2017	8/8/2018
GH-84158-16	GUNN	03B2443	41 - Legal Mail	Process Within 24 Hours	9/20/2016	2/22/2017	8/8/2018
GH-84160-16	GUNN	03B2443	41 - Legal Mail	Legal Mail Processed	9/20/2016	2/22/2017	8/8/2018
GH-84225-16	GUNN	03B2443	22 - Medical	Denied Sick Call	9/26/2016	2/22/2017	8/8/2018
GH-84226-16	GUNN	03B2443	22 - Medical	Symptoms After Shots	9/26/2016	3/10/2017	8/8/2018
GH-84286-16	GUNN	03B2443	49 - Staff Conduct	Staff Misconduct	10/3/2016	1/24/2017	11/1/2017
GH-84287-16	GUNN	03B2443	22 - Medical	Denied Medical Treatment	10/4/2016	2/22/2017	8/8/2018
GH-84362-16	GUNN	03B2443	40 - Law Library	Denied Law Library	10/5/2016	2/22/2017	8/8/2018
GH-84489-16	GUNN	03B2443	44 - Inmate Grievance Program	Directive #4040 Violated	10/8/2016	3/1/2017	8/8/2018
GH-84428-16	GUNN	03B2443	41 - Legal Mail	Legal Mail Not Processed	10/13/2016	5/9/2017	8/8/2018
GH-84431-16	GUNN	03B2443	49 - Staff Conduct	Discrimination By Nurse	10/13/2016	1/24/2017	11/1/2017
GH-84456-16	GUNN	03B2443	40 - Law Library	Denied Law Library	10/17/2016	5/9/2017	8/8/2018
GH-84777-16	GUNN	03B2443	22 - Medical	Denied Pain Medication	11/22/2016	5/9/2017	8/8/2018
GH-85168-16	GUNN	03B2443	44 - Inmate Grievance Program	Grievance Investigation Of GH-84286-16	12/27/2016	5/31/2017	8/8/2018
GH-85815-17	GUNN	03B2443	41 - Legal Mail	Legal Mail Disbursement Not Processed	3/6/2017	7/21/2017	8/8/2018
GH-85967-17	GUNN	03B2443	23 - Housing - Internal Block Affairs	Soap/Papier Towels In Medical Inmate Bathroom	3/22/2017	9/1/2017	8/8/2018
GH-86617-17	GUNN	03B2443	30 - Package Room - #4911	Package Withheld	5/25/2017	7/25/2017	8/8/2018
GH-86981-17	GUNN	03B2443	49 - Staff Conduct	Threats/Property Damages	7/6/2017	9/26/2017	8/8/2018

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Lindsey B. Chiboucas - ?


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Closed Cases

<input type="checkbox"/> Case Number	Grievant Last Name	Grievant DIN Number	Case Code	Title	Date Filed†	Received Date	Schd Date
Count= 98							
WDE-21155-04	GUNN	03B2443	12 - Work Assignments	Receive Back Pay	3/31/2004	6/17/2004	
WDE-21557-04	GUNN	03B2443	03 - Correspondence	Neg. Correspondence	6/17/2004	7/26/2004	
WDE-22808-05	GUNN	03B2443	49 - Staff Conduct	Verbal Abuse / Retaliation	3/16/2005	5/9/2005	
WDE-22993-05	GUNN	03B2443	23 - Housing - Internal Block Affairs	Call-Outs From Block	4/13/2005	6/27/2005	
CL-54248-06	GUNN	03B2443	21 - Dental	Wants Cleaning	12/4/2006	12/28/2006	
CL-55114-07	GUNN	03B2443	22 - Medical	Inadequate Care By Doctor	6/19/2007	7/16/2007	
CL-55218-07	GUNN	03B2443	22 - Medical	High Liver Enzymes	7/9/2007	8/24/2007	
CL-56007-07	GUNN	03B2443	42 - Inmate Rights - Access/Courts/Counsel/Notary, etc.	Inmate Org. By-Laws	11/5/2007	12/28/2007	
CL-56313-08	GUNN	03B2443	03 - Correspondence	Team Photo-Minors Denied	1/7/2008	3/7/2008	
CL-56662-08	GUNN	03B2443	41 - Legal Mail	Pro Se Litigators Mail Not Privileged	3/3/2008	4/18/2008	
CL-56955-08	GUNN	03B2443	42 - Inmate Rights - Access/Courts/Counsel/Notary, etc.	Copies Of Reports In Library	4/10/2008	7/9/2008	
CL-57363-08	GUNN	03B2443	15 - Special Events/Inmate Organizations	Remove Suspension	7/9/2008	8/11/2008	
CL-58317-08	GUNN	03B2443	21 - Dental	Replace Partial	12/15/2008	2/2/2009	
CL-58875-09	GUNN	03B2443	49 - Staff Conduct	Power Shut Off	4/8/2009	5/11/2009	
CL-59759-10	GUNN	03B2443	12 - Work Assignments	Wants Back Pay For Raise	3/22/2010	5/14/2010	
CL-59758-10	GUNN	03B2443	29 - Inmate Property	Transfer Property	3/22/2010	5/3/2010	
CL-59773-10	GUNN	03B2443	49 - Staff Conduct	Assault/Property Confiscated	3/29/2010	5/14/2010	
CL-59776-10	GUNN	03B2443	37 - Mess Hall	Inadequate Portions	4/1/2010	5/14/2010	
CL-59783-10	GUNN	03B2443	24 - Special Housing Units	Rodents/Unsanitary Conditions	4/6/2010	5/14/2010	
CL-59788-10	GUNN	03B2443	29 - Inmate Property	Property Limits Unfair	4/8/2010	5/14/2010	
UST-42768-10	GUNN	03B2443	40 - Law Library	Not Receiving Requests	6/1/2010	6/25/2010	
UST-43118-10	GUNN	03B2443	40 - Law Library	Not Receiving Requests	7/9/2010	8/16/2010	
UST-43290-10	GUNN	03B2443	44 - Inmate Grievance Program	Grievance Program Does Not Work	7/28/2010	11/15/2010	
UST-43329-10	GUNN	03B2443	40 - Law Library	Receive Requested Material	8/2/2010	8/31/2010	
UST-43585-10	GUNN	03B2443	24 - Special Housing Units	Sleep Deprivation With Night Lights	8/26/2010	9/27/2010	
UST-43630-10	GUNN	03B2443	44 - Inmate Grievance Program	File Untimely Grievance	9/1/2010	9/27/2010	
UST-43683-10	GUNN	03B2443	49 - Staff Conduct	CO Denied Rec On Purpose	9/7/2010	9/27/2010	
UST-44222-10	GUNN	03B2443	07 - Recreation (TV,Yard,Movies,etc)	Radio Schedule Change	11/3/2010	12/3/2010	1/26/2011
UST-44286-10	GUNN	03B2443	22 - Medical	Wants Injury To Back Repaired	11/8/2010	12/13/2010	1/26/2011
UST-44369-10	GUNN	03B2443	42 - Inmate Rights - Access/Courts/Counsel/Notary, etc.	Denied ILC Minutes	11/16/2010	12/10/2010	2/10/2011
UST-44706-10	GUNN	03B2443	24 - Special Housing Units	CO Refused Stapler	12/20/2010	1/14/2011	3/16/2011
UST-44713-10	GUNN	03B2443	22 - Medical	Being Denied Medical Care	12/20/2010	1/24/2011	3/23/2011
UST-44905-11	GUNN	03B2443	07 - Recreation (TV,Yard,Movies,etc)	Radio Schedule Is Not Being Followed	1/6/2011	2/14/2011	4/27/2011
GM-51395-11	GUNN	03B2443	04 - Phone Home Program	Wants To Make Collect Call	2/24/2011	4/7/2011	6/8/2011
GM-51946-11	GUNN	03B2443	01 - Program Committee	Wants Meaningful Program	5/9/2011	7/19/2011	9/14/2011
GM-51957-11	GUNN	03B2443	07 - Recreation (TV,Yard,Movies,etc)	Follow TV Schedule	5/12/2011	6/27/2011	8/24/2011
GM-52055-11	GUNN	03B2443	23 - Housing - Internal Block Affairs	Denied Food And Medication	5/23/2011	8/15/2011	10/19/2011
GM-52399-11	GUNN	03B2443	49 - Staff Conduct	Harassment & Threatened By CO	8/2/2011	10/19/2011	1/25/2012
GM-52482-11	GUNN	03B2443	49 - Staff Conduct	Staff Conduct	8/11/2011	9/16/2011	11/23/2011
GM-52552-11	GUNN	03B2443	40 - Law Library	Wants Law Library Access	8/29/2011	9/30/2011	12/14/2011
GM-52655-11	GUNN	03B2443	42 - Inmate Rights - Access/Courts/Counsel/Notary, etc.	Denied Phone Conference With Family Court	9/15/2011	11/25/2011	3/21/2012
GM-52976-11	GUNN	03B2443	49 - Staff Conduct	Destroyed Papers	11/28/2011	1/4/2012	4/18/2012
GM-53322-12	GUNN	03B2443	22 - Medical	Wants Proper Treatment	1/17/2012	3/2/2012	7/18/2012
GM-53551-12	GUNN	03B2443	23 - Housing - Internal Block Affairs	Denied Thermal Underwear	2/21/2012	4/27/2012	8/29/2012
EL-39478-12	GUNN	03B2443	37 - Mess Hall	Keelock Trays	4/19/2012	5/18/2012	9/19/2012
EL-39588-12	GUNN	03B2443	22 - Medical	Hurt In Fall/Lack Of Nutrition	6/4/2012	7/23/2012	10/31/2012
EL-39753-12	GUNN	03B2443	06 - Guidance Unit/Counseling	Change Phone List	7/24/2012	9/24/2012	1/16/2013
EL-40226-12	GUNN	03B2443	22 - Medical	Proper Treatment For Pain	11/16/2012	12/24/2012	6/5/2013

Case Number	Grievant Last Name	Grievant DIN Number	Case Code	Title	Date Filed	Received Date	Schd Date
EL-40307-12	GUNN	03B2443	44 - Inmate Grievance Program	Appeal Considered Untimely	12/10/2012	2/4/2013	6/12/2013
EL-40425-13	GUNN	03B2443	22 - Medical	Diagnosis In Writing/Pain Medications	1/10/2013	3/11/2013	7/10/2013
EL-40437-13	GUNN	03B2443	19 - General Library	Library Loan Program	1/14/2013	4/8/2013	9/4/2013
EL-40666-13	GUNN	03B2443	06 - Guidance Unit/Counseling	Issues With Counselor	3/18/2013	5/31/2013	10/16/2013
EL-40672-13	GUNN	03B2443	41 - Legal Mail	Legal Mail Not Handed Out	3/19/2013	5/16/2013	9/4/2013
EL-40777-13	GUNN	03B2443	49 - Staff Conduct	Sexually Violated Via Pat Frisk	4/15/2013	6/24/2013	3/12/2014
EL-40800-13	GUNN	03B2443	49 - Staff Conduct	Denied Meal/Retaliation	4/18/2013	5/16/2013	9/4/2013
EL-40798-13	GUNN	03B2443	49 - Staff Conduct	Keeplock/Missed Call-Outs	4/18/2013	6/10/2013	10/2/2013
EL-40803-13	GUNN	03B2443	49 - Staff Conduct	Kicked And Provoked	4/19/2013	5/31/2013	9/18/2013
EL-40801-13	GUNN	03B2443	49 - Staff Conduct	Ordered To Bench	4/19/2013	6/10/2013	9/25/2013
EL-40802-13	GUNN	03B2443	49 - Staff Conduct	Intimidated By Officer	4/19/2013	5/20/2013	10/9/2013
EL-40837-13	GUNN	03B2443	03 - Correspondence	Legal Postage Not Applied/Flat Rate Envelope	5/1/2013	6/10/2013	9/25/2013
EL-40868-13	GUNN	03B2443	49 - Staff Conduct	Not Being Let Out/Retaliation	5/6/2013	6/5/2013	9/25/2013
EL-40890-13	GUNN	03B2443	49 - Staff Conduct	Harassed And Deprived By Officer	5/9/2013	6/24/2013	10/30/2013
EL-40954-13	GUNN	03B2443	44 - Inmate Grievance Program	Refusal To Process Grievance (EL-40666-13)	5/29/2013	7/24/2013	12/4/2013
EL-41072-13	GUNN	03B2443	44 - Inmate Grievance Program	IGPS Failure To Process	6/26/2013	9/9/2013	1/22/2014
EL-41105-13	GUNN	03B2443	49 - Staff Conduct	Sexual Assault With Frisk	7/3/2013	8/7/2013	12/18/2013
EL-41106-13	GUNN	03B2443	44 - Inmate Grievance Program	Questions Putting Grievances Together	7/3/2013	9/9/2013	1/22/2014
EL-41247-13	GUNN	03B2443	49 - Staff Conduct	Keeplock As Punishment	8/1/2013	9/9/2013	1/29/2014
EL-41887-13	GUNN	03B2443	41 - Legal Mail	Wants Legal Mail Timely	12/4/2013	1/27/2014	5/14/2014
EL-42163-14	GUNN	03B2443	49 - Staff Conduct	Harassed/Threatened/Legal Work Read	2/4/2014	4/22/2014	7/30/2014
EL-42205-14	GUNN	03B2443	49 - Staff Conduct	Discriminating Slurs/Actions	2/11/2014	4/22/2014	7/30/2014
EL-42366-14	GUNN	03B2443	03 - Correspondence	Advance Request Returned	3/28/2014	6/2/2014	9/3/2014
EL-42451-14	GUNN	03B2443	22 - Medical	Various Sick Call Issues	4/12/2014	6/9/2014	9/10/2014
EL-42555-14	GUNN	03B2443	41 - Legal Mail	Legal Mail Procedure	5/12/2014	7/30/2014	10/29/2014
GH-77719-14	GUNN	03B2443	29 - Inmate Property	Receive Legal Draft Bag	9/3/2014	11/24/2014	2/11/2015
GH-77745-14	GUNN	03B2443	28 - Tier III Policy & Procedure	False MBR	9/10/2014	4/24/2015	6/3/2015
GH-77791-14	GUNN	03B2443	23 - Housing - Internal Block Affairs	Receive Cell Set Up/Mattress	9/19/2014	4/24/2015	6/3/2015
GH-77939-14	GUNN	03B2443	06 - Guidance Unit/Counseling	Be Assigned New ORC	10/3/2014	12/29/2014	4/1/2015
GH-79323-15	GUNN	03B2443	22 - Medical	Receive Medical Treatment	3/24/2015	7/28/2015	11/2/2016
GH-79421-15	GUNN	03B2443	40 - Law Library	Change Law Library Policy And Procedure	4/17/2015	6/24/2015	11/25/2015
GH-80214-15	GUNN	03B2443	40 - Law Library	Denied Extended Access To Law Library	7/21/2015	9/11/2015	11/18/2015
GH-80213-15	GUNN	03B2443	49 - Staff Conduct	Assault	7/21/2015	11/19/2015	5/4/2016
GH-80561-15	GUNN	03B2443	49 - Staff Conduct	False MBR	8/25/2015	11/19/2015	1/13/2016
GH-81006-15	GUNN	03B2443	41 - Legal Mail	Legal Mail Processing	10/14/2015	6/28/2016	2/22/2017
GH-81208-15	GUNN	03B2443	30 - Package Room - #4911	Package Return/Overcharged Postage	11/2/2015	3/3/2016	7/27/2016
GH-82993-16	GUNN	03B2443	44 - Inmate Grievance Program	Re-Investigate GH-80213-15	5/16/2016	8/5/2016	12/14/2016
GH-83068-16	GUNN	03B2443	49 - Staff Conduct	Harassment/Medical	5/24/2016	7/12/2016	11/9/2016
GH-83066-16	GUNN	03B2443	23 - Housing - Internal Block Affairs	Denied Writing Material	5/24/2016	9/27/2016	4/5/2017
GH-83057-16	GUNN	03B2443	44 - Inmate Grievance Program	Denied Appeal/False Reports	5/24/2016	8/5/2016	4/19/2017
GH-83127-16	GUNN	03B2443	41 - Legal Mail	Legal Mail Not Processed Out	5/31/2016	8/19/2016	2/8/2017
GH-83275-16	GUNN	03B2443	03 - Correspondence	Process Within 24 Hours	6/20/2016	8/19/2016	2/15/2017
GH-83297-16	GUNN	03B2443	30 - Package Room - #4911	Receive Package	6/20/2016	9/12/2016	3/29/2017
GH-83274-16	GUNN	03B2443	39 - Facility Maintenance	Install Fan	6/20/2016	10/12/2016	4/26/2017
GH-83276-16	GUNN	03B2443	44 - Inmate Grievance Program	Follow Directive #4040	6/20/2016	9/27/2016	5/31/2017
GH-83277-16	GUNN	03B2443	49 - Staff Conduct	Retaliation/Harassment	6/20/2016	11/7/2016	6/7/2017
GH-83347-16	GUNN	03B2443	30 - Package Room - #4911	Follow Directive #4911	6/23/2016	9/12/2016	3/29/2017
GH-83510-16	GUNN	03B2443	49 - Staff Conduct	False Statements By Sergeant	7/13/2016	11/7/2016	8/30/2017
GH-83652-16	GUNN	03B2443	22 - Medical	Receive Pain Medication	7/28/2016	12/12/2016	8/9/2017
GH-83766-16	GUNN	03B2443	49 - Staff Conduct	Discrimination	8/12/2016	11/21/2016	7/5/2017

➡ Add new item

EXHIBIT 18

PLAINTIFF'S MENTAL HEALTH
RECORDS
FILED UNDER SEAL